



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2014

Mr. Ronald D. Stutes
Potter Minton
500 Plaza Tower
110 North College
Tyler, Texas 75702

OR2014-11730

Dear Mr. Stutes:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 528440.

The City of Canton (the "city"), which you represent, received a request for the name and address of a specified vendor at the city's First Monday Trade Days (the "marketplace"). You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the request is for only the name and address of the specified vendor. Accordingly, the submitted information that does not consist of the requested name and address is not responsive to the instant request. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. This exception protects a governmental body's interests in connection with competitive bidding and in certain other competitive situations. *See* Open Records Decision No. 592 (1991) (construing statutory predecessor). This office has held that a governmental body may seek protection as a competitor in the marketplace under section 552.104 and avail itself of the "competitive advantage" aspect of this exception if it can satisfy two criteria. *See id.* First, the governmental body must demonstrate that it has specific marketplace interests. *See id.* at 3. Second, the governmental body must demonstrate a specific threat of actual or potential harm to its interests in a particular competitive situation. *See id.* at 5. Thus, the question of

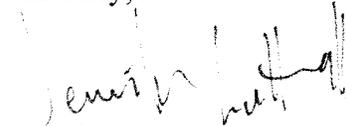
whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation. *See id.* at 10. A general allegation of a remote possibility of harm is not sufficient. *See* Open Records Decision No. 514 at 2 (1988).

You inform us that the city operates the marketplace, a flea market that generates revenue for the city through the lease of space to vendors. You assert release of the responsive information would place the city at a disadvantage with other competing entities who seek to emulate the city's success with this marketplace. You explain these entities are competing for the same vendors and the loss of the vendors would negatively impact the city's revenue. Based upon your representations, we find the city has sufficiently demonstrated it has specific marketplace interests in this instance and release of the responsive information would harm the city in a particular competitive situation. *See* ORD 593. Thus, we conclude the city may withhold the responsive information under section 552.104 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 528440

Enc. Submitted documents

c: Requestor
(w/o enclosures)