



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 23, 2015

Ms. Susan Camp-Lee
Counsel for City of Hutto
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664

OR2015-12329

Dear Ms. Lee:

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# 568438.

The City of Hutto (the "city"), which you represent, received a request for communications pertaining to two specified terms to or from three named individuals for a specified time period. You state the city has released some information. You claim the submitted information is excepted from disclosure under sections 552.104, 552.111, and 552.131 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.104 of the Government Code 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. 593 (1991) (construing statutory predecessor). This office has held 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 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

¹Although you also raise section 552.105 for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

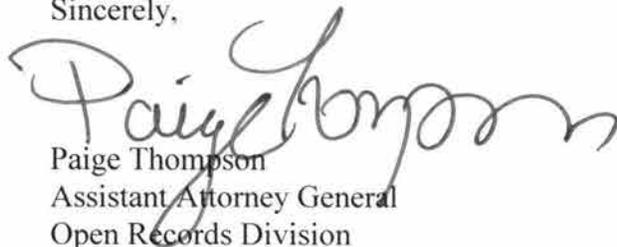
whether the release of particular information will harm a governmental body's legitimate interests as a competitor in a marketplace depends on the sufficiency of the governmental body's demonstration of the prospect of specific harm to its marketplace interests in a particular competitive situation.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

You contend the city is competing against other entities to recruit a specific business for a specific project to their respective areas. You state the submitted information pertains to ongoing economic development negotiations with the specified business for the specified project. You assert the submitted information relates to procedures and strategies regarding a specified project. You further assert release of the information would hamper the city's negotiating position because it would expose the city's strategies to other entities seeking the same business. Based on your representations and our review, we find you have demonstrated the city has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. Further, we find you have demonstrated release of the submitted information would cause specific harm to the city's marketplace interests in a particular competitive situation. Accordingly, the city may withhold the submitted information under section 552.104 of the Government Code.²

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.

Ref: ID# 568438

Enc. Submitted documents

c: Requestor
(w/o enclosures)