



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 6, 2003

Ms. Mia Settle-Vinson  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2003-3048

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180488.

The City of Houston (the "City") received a request for five categories of information concerning seven Cable Television Franchisees. Although you do not make any argument on behalf of the third parties whose proprietary interests may be implicated by the request, you claim that the responsive information may be excepted from disclosure under sections 552.101, 552.110, 552.113, and 552.131 of the Government Code. You indicate, and provide documentation showing, that the City has notified the seven third parties to afford each entity an opportunity to supply objections to release of the submitted information. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have reviewed the submitted information and we have considered the exceptions asserted.

Initially, we address the City's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written

request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You state that you received the request for information on February 14, 2003. However, you did not submit a copy of the specific information requested or representative samples thereof until May 5, 2003. Therefore, the City has not complied with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, when some other source of law makes the information confidential or the information impacts the interests of a third party, a compelling interest exists. Open Records Decision No. 150 at 2 (1977). Because the present request affects third party interests, we will address the section 552.110 arguments we have received from the company that responded to the City's section 552.305 notice.

Northland Cable Properties Franchises ("Northland") submitted arguments for withholding their information under section 552.110(b). Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Northland argues that its financial information regarding franchise payments is confidential commercial and financial information and release of such information would offer the requestor a competitive advantage. Upon review, however, we find that Northland has not substantiated its comments with specific factual evidence pertaining to the submitted information, and has not demonstrated that release of commercial or financial information would cause it substantial competitive harm. Thus, we are unable to determine that section 552.110(b) applies to any of the information pertaining to Northland. Accordingly, we determine that the City may not withhold any portion of the submitted information pertaining to Northland under section 552.110(b) of the Government Code.

Furthermore, as of the date of this letter, Time Warner, TVMAX, Kingwood Cablevision, Western Integrated Networks of Texas, WOW, and Grande Communications have not submitted to this office their reasons explaining why the City should not release their information. Therefore, these third parties have provided us with no basis to conclude that

they have a protected proprietary interest in any of the submitted information. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). As such, the City must release the submitted information pertaining to these third parties.

In summary, the City must release the responsive information in its entirety to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

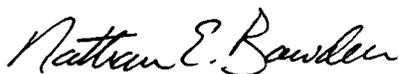
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/HPR/sdk

Ref: ID# 180488

Enc: Submitted documents

c: Ms. Rhonda Druke  
Phonoscope, Inc.  
6105 Westline Drive  
Houston, Texas 77036-3515  
(w/o enclosures)

Mr. Paul Milan  
Northland Communications  
101 Stewart Street, Suite 700  
Seattle, Washington 98101  
(w/o enclosures)

Mr. T. Ray Purser  
Time Warner Communications  
8400 West Tidwell  
Houston, Texas 77040  
(w/o enclosures)

Mr. Dennis Malloy  
Shaw Communications  
4103 West Lake Houston Parkway  
Kingwood, Texas 77339  
(w/o enclosures)

Mr. Paul Lewis  
Grande Communications  
401 Carlson Circle  
San Marcos, Texas 78666  
(w/o enclosures)

Mr. Scott van Derhei  
ETS  
13105 Northwest Freeway, Suite 1020  
Houston, Texas 77040  
(w/o enclosures)

Mr. Francis A. Fries  
TVMax of Houston  
1111 West Mockingbird Lane, Suite 1130  
Dallas, Texas 75247  
(w/o enclosures)

Western Integrated Networks  
Colorado Center Tower Two  
2000 South Colorado Boulevard, Suite 670  
Denver, Colorado 80222  
(w/o enclosures)