



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2005

Mr. Jeffrey L. Moore
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2005-00770

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under the Public Information Act ("Act"), chapter 552 of the Government Code. Your request was assigned ID# 217670.

The City of Highland Village (the "city"), which you represent, received a request for a draft franchise agreement provided to the city by Verizon Southwest ("Verizon"). You claim that the requested information is excepted from disclosure pursuant to sections 552.110 and 552.111 of the Government Code. You also indicate that release of the requested information may implicate the proprietary interests of Verizon. Accordingly, you have notified Verizon of the request and of the company's right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have considered all of the submitted arguments and the submitted information.

Verizon has submitted comments to this office contending that the draft franchise agreement at issue is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110 of the Government Code can protect trade secrets, and certain commercial or financial information. *See* Gov't Code § 552.110(a), (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). To establish that information is excepted from disclosure under section 552.110(b) a party must make a specific factual or evidentiary showing that substantial competitive injury would result from release of the information at issue. Conclusory or generalized allegations that disclosure will result in competitive harm will not suffice. 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).

Verizon contends that release of the requested information will enable competitors to infer Verizon's specific strategies and business practices with respect to the fiber optic telecommunications and broadband service Verizon seeks to provide to potential customers in the city. Upon review of Verizon's arguments and the documents submitted, we determine Verizon has made a specific factual showing that release of the submitted information would cause substantial competitive harm to Verizon. We therefore conclude the city must withhold the submitted information pursuant to section 552.110(b) of the Government Code. As we are able to make this determination, we do not reach the city's claimed exceptions to disclosure.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 217670

Enc. Submitted documents

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