



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 8, 2005

Ms. Irina Visan  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
500 North Akard, Suite 1800  
Dallas, Texas 75201

OR2005-11021

Dear Ms. Visan:

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# 236723.

The City of Rowlett (the "city"), which you represent, received a request for (1) information regarding "all occurrences [during a specified time period] wherein the information provided by Verizon for [the city's] ANI/ALI database did not match the actual address . . . associated with the phone number" and (2) contracts between the district and GTE and Verizon regarding telephone service. You claim that the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. You further state that you have notified Verizon and GTE of their right to submit arguments as to why the requested information should not be released. *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 Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information, some of which consists of a representative sample.<sup>1</sup>

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Verizon and GTE have not submitted to this office their reasons explaining why the requested information relating to them should not be released. Consequently, these companies have provided this office with no basis to conclude that their responsive information is excepted from disclosure. *See id.* § 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). Accordingly, we conclude that you may not withhold any portion of the submitted information relating to these companies on the basis of their proprietary interests.

We note that the information submitted as Exhibit 3 includes city ordinances and city council resolutions. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision Nos. 551 at 2-3 (1990) (laws or ordinances are open records), 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records"). We believe that the submitted city council resolutions are analogous to an ordinance. Accordingly, the submitted city ordinances and city council resolutions must be released.

We next address the information that you have submitted as Exhibit 2. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. Section 771.061 provides in part:

- (a) Information that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service is confidential and is not available for public inspection. Information that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service is confidential and is not available for public inspection.

Health & Safety Code § 771.061(a). This section makes confidential certain information that telephone companies and the United States Postal Service furnish a governmental entity that provides computerized 9-1-1 emergency services. *See generally* Open Records Decision No. 661 (1999). We understand you to represent that the city operates a computerized 9-1-1 service. Provided that the city does in fact operate a computerized 9-1-1 service, and to the extent that the information at issue was required to be furnished to the city by a

telecommunications service provider or is contained in an address database used in providing computerized 9-1-1 service, we agree that the information you have submitted as Exhibit 2 is confidential under section 771.061 and must be withheld under section 552.101. *See id.* If the city does not operate a computerized 9-1-1 service, or if it does operate such a service but the information at issue was not required to be furnished to the city by a telecommunications service provider and is not contained in an address database used in providing computerized 9-1-1 service, then Exhibit 2 is not excepted from disclosure under section 552.101 in conjunction with section 771.061.

To the extent the information in Exhibit 2 is not confidential under section 771.061, we address your claim under the common law informer's privilege. Section 552.101 also encompasses the common law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990). However, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege.

In this instance, you do not point to any specific report of violation of law, nor does the information itself reflect which 9-1-1 calls, if any, were made for the purpose of reporting violations of law. We conclude, therefore, that the city has not met its burden under the informer's privilege, and the information at issue may not be withheld on this basis.

Finally, we address the argument you raise for the remaining information in Exhibit 3. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect a governmental body's interests in competitive situations, typically in the context of competitive bidding. *See* Open Records Decision No. 592 (1991). A governmental body seeking to withhold information from disclosure pursuant to section 552.104 must demonstrate some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 generally does not except information

relating to competitive bidding after a contract has been awarded and executed. *See* Open Records Decision No. 541 (1990). However, this office has determined that in some circumstances, section 552.104 may apply to information pertaining to an executed contract where the governmental body solicits bids for the same or similar goods or services on a recurring basis. *See id* at 5.

In this case, you advise that the contracts at issue have been awarded and executed. You state, however, that “the city will always need 9-1-1 service, and the services needed will be the same services that these companies currently provide.” Thus, you indicate that the city will make similar requests for proposals in the future. Furthermore, you assert that the release of the remaining information in Exhibit 3 “will definitely give competitors a guideline by which to unfairly defeat a bid on future [services] from any of these companies.” Based on your representations and our review of the submitted information at issue, we find that the city has adequately demonstrated in this instance that the release of the remaining information in Exhibit 3 would harm the interests of the city. *See* Open Records Decision No. 592 (1991). Accordingly, we conclude that the city may withhold the remaining information in Exhibit 3 pursuant to section 552.104 of the Government Code.

In summary, to the extent Exhibit 2 is confidential under section 771.061 of the Health and Safety Code, it must be withheld pursuant to section 552.101 of the Government Code. Other than city resolutions and city ordinances that must be released, the remaining information submitted as Exhibit 3 may be withheld under section 552.104 of the Government Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/seg

Ref: ID# 236723

Enc. Submitted documents

c: Mr. J.A. Luce  
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(w/o enclosures)