



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2008

Ms. Kristy J. Orr
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2008-08685

Dear Ms. Orr:

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# 314224.

The City of Houston (the "city") received a request for the car rental market share data on a monthly basis from 2007 through April 2008. You state the city will not assert any exceptions to withhold the requested information. Rather, the city has notified nine interested third parties of the request for information and of their right to submit arguments to this office pursuant to section 552.305 of the Government Code. *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 the Act in certain circumstances). We have reviewed the submitted information. We have also received and considered comments submitted by First Transit.

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 to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this decision, Advantage Rent-A-Car, Inc., Alamo/National (Vanguard USA Inc.), Avis Rent-A-Car, Inc., Budget Rent-A-Car, Dollar Rent-A-Car, Enterprise Rent-A-Car, The Hertz Corporation, and Thrifty Car Rental have not submitted to this office any arguments as to why their information should not be released. Therefore, none of these interested third parties have provided us with any basis to conclude

that they have a proprietary interest in any of the submitted information. *See, e.g., 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 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 the city may not withhold any portion of the submitted information based on the proprietary interests of Advantage Rent-A-Car, Inc., Alamo/National (Vanguard USA Inc.), Avis Rent-A-Car, Inc., Budget Rent-A-Car, Dollar Rent-A-Car, Enterprise Rent-A-Car, The Hertz Corporation, and Thrifty Car Rental.

First Transit contends that its information is not subject to the Act. Section 552.002(a) of the Act provides:

(a) In this chapter, “public information” means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov’t Code § 552.002(a). Thus, virtually all information in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). First Transit argues that, because the information relates to a contract between two private entities, First Transit and Bush Intercontinental Airport Rental Car Center (“IAH RAC”), “[t]he fact that information may be in the City’s possession does not make the information subject to the Act.” We note that Bush Intercontinental Airport is part of the city, which is a governmental body pursuant section 552.003 of the Government Code. *See* Gov’t Code § 552.003(1)(A)(xii) (defining “governmental body” for purposes of the Act). Furthermore, the information at issue consists of “information collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by the city. Therefore, we conclude that the submitted information is subject to the Act.

We now address First Transit’s argument under section 552.110 of the Government Code for the submitted information. 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* Open Records Decision Nos. 661 at 5-6 (1999) (stating that business

enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm).

After reviewing the submitted gross auto rental revenues and First Transit's arguments, we conclude that First Transit has made only conclusory allegations that release of its information would result in substantial competitive harm and has not provided a specific factual or evidentiary showing to support this allegation. See Open Records Decision No. 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Accordingly, we determine that no portion of First Transit's information is excepted from public disclosure under section 552.110(b) of the Government Code. Thus, the city must release the submitted information 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

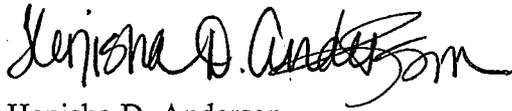
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 314224

Enc. Submitted documents

c: Mr. Kevin Alberty
FTN Midwest Securities Corp.
1301 East 9th Street, Suite 3232
Cleveland, Ohio 44114-1824
(w/o enclosures)