



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2008

Ms. Mindy Ward
City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR2008-09816

Dear Ms. Ward:

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# 316203.

The City of San Angelo (the "city") received a request for a "list of San Angelo business and organizations that have or had been recipients of money and or services in either grant or loans aimed at economic development in San Angelo from San Angelo's half cent sales tax and amounts given with stipulations" and for "[a]ll information concerning CVCED [Concho Valley Center for Entrepreneurial Development]" for a specified time period. Although the city takes no position on the release of the submitted information, you explain that it may contain confidential and proprietary information subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the city notified Aggregate Media, LLC, Account Control Technology, Angelo Kidney Connection, Fletch Data, L.L.C., Hands of Grace, MyMail Technology, New Life Computer and Electronic Recycling, Scrapbook University, and TLC In Home Care, Inc. ("TLC"), of this request for information and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received arguments from TLC and reviewed the submitted information.

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 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 letter, Aaggregate Media, LLC, Account Control Technology, Angelo Kidney Connection, Gletch Data, L.L.C., Hands of Grace, MyMail Technology, New Life Computer and Electronic Recycling, and Scrapbook University have not submitted to this office any reasons explaining why their information should not be released. Thus, we thus have no basis for concluding that any portion of the submitted information pertaining to these companies constitutes proprietary information, and none of it may be withheld on that basis. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Next, TLC asserts that their information is not public information, and thus is not subject to the Act. The Act is only applicable to "public information." See Gov't Code § 552.021. Section 552.002(a) defines public information as "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." *Id.* § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). In this instance, TLC states that "CVCED is required to provide information to the [city] as a means of determining the effectiveness of the CVCED's programs;" and that "[t]he information we provide to the CVCED [is] in turn provided to the [city]..." Upon review, we conclude that the information at issue is held by the city and relates to the transaction of official city business. Therefore, the information at issue is public information and is subject to the Act.

Next, TLC asserts that its information at issue was provided to CVCED under an agreement that its information would be aggregated if released outside of the CVCED. Although TLC may have an agreement with CVCED to limit disclosure of its information, the information at issue was requested from the city, and we are not aware of any agreement between the city and CVCED or TLC to withhold TLC's information. Even if there were such an agreement, we note that information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). Thus, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the requested information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

Section 552.110(b) of the Government Code excepts from disclosure “[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.” Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

We find that TLC has established that the release of a portion of its information would cause it substantial competitive injury; therefore, the city must withhold this information, which we have marked, under section 552.110(b). But we find that TLC has made only conclusory allegations that release of the remaining information would cause it substantial competitive injury, and has provided no specific factual or evidentiary showing to support such allegations. Thus, the city may not withhold any of the remaining information under section 552.110(b). As you have raised no other exceptions to disclosure for the submitted information, it must be released.

To summarize, the city must withhold the information we have marked under section 552.110(b) of the Government Code. The remaining information must be released.

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). If the governmental body does not file suit over 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 316203

Enc. Submitted documents

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