



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2014

Mr. Grant Jordan
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2014-09717

Dear Mr. Jordan:

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# 525176 (PIR No. W032304).

The City of Fort Worth (the "city") received a request for "[t]he most recent 2 years of applications for renewal of operating authority of Irving Holdings, Inc./Yellow Cab" and all supporting documentation submitted regarding the applications. You state the department has no information responsive to a portion of the request.¹ You inform us the department has released some of the requested information to the requestor. You also inform us you will redact certain information in accordance with sections 552.130 and 552.136 of the Government Code. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Irving Holdings, Inc., d/b/a Yellow Cab ("Yellow Cab"). Accordingly, you state, and provide documentation showing, you notified Yellow Cab of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on

¹The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

As you acknowledge, the department failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption 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; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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 section 552.302); Open Records Decision No. 630 (1994). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* § 552.302; Open Records Decision No. 150 at 2 (1977). Because third party interests are at stake in this instance, we will consider whether the information at issue must be withheld under the Act.

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, we have not received comments from Yellow Cab explaining why the submitted information should not be released. Therefore, we have no basis to conclude Yellow Cab has a protected proprietary interest in the submitted information. *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. Accordingly, the city may not withhold any of the information at issue on the basis of any proprietary interest Yellow Cab may have in it. As no other exceptions to disclosure have been raised, the submitted information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 525176

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jack Bewley
Irving Holdings, Inc.
DBA Yellow Cab
2200 South Riverside Drive
Fort Worth, Texas 76104
(w/o enclosures)