



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2014

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2014-12008

Dear Ms. Nicholson:

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# 528856 (City PIR Nos. 20345, 21007).

The City of Austin (the "city") received two requests for activity reports submitted to the city's Small and Minority Business Resources Department by specified entities. You state some information has been released to the requestors. Although you take no position as to whether the remaining requested information is excepted under the Act, you state release of this information may implicate the proprietary interests of the Austin Black Contractors Association (the "association").¹ Accordingly, you state you notified the association of the request for information and of its 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) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

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 the

¹You acknowledge, and we agree, the city did not comply with the procedural requirements of section 552.301(b) of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). However, because third-party interests can provide a compelling reason to withhold information, we will consider whether the submitted information is excepted under the Act on that ground. *See* Open Records Decision No. 150 at 2 (1977).

association explaining why the submitted information should not be released. Therefore, we have no basis to conclude the association 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 the 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 the submitted information on the basis of any proprietary interest the association may have in the information.

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. As no exceptions to disclosure have been raised, the city must release the submitted information, but any information protected by copyright may only be released in accordance with copyright law.

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,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/tch

Ref: ID# 528856

Enc. Submitted documents

c: Two Requestors
(w/o enclosures)

Ms. Carol Hadnot
Austin Black Contractors Association
6448 Highway 290 East, Suite E-107
Austin, Texas 78723
(w/o enclosures)