



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 20, 2014

Ms. Nneka Kanu  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2014-18811

Dear Ms. Kanu:

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# 540179 (Houston GC Nos. 21668 and 21737).

The City of Houston (the "city") received a request for the airport advertising concession monthly reports for the William P. Hobby Airport ("Hobby") and the George Bush Intercontinental Airport during a specified time period, the current airport advertising concession agreement and amendments for Hobby, and proposals submitted for a specified request for proposals. The city received a second request for the winning proposal and contract for the advertising concession at Hobby. You state the city will release some information to the requestors. You state, although the city takes no position with respect to the remaining requested information, its release may implicate the interests of JCDecaux North America ("JCDecaux") and Corey S/B Joint Venture d/b/a Corey Airport Services ("Corey"). Accordingly, you state, and provide documentation demonstrating, the city notified JCDecaux and Corey of the requests for information and of their right to submit arguments stating why their 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 statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from JCDecaux. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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 Corey explaining why its information should not be released. Therefore, we have no basis to conclude Corey 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 Corey may have in it.

We note the submitted information includes Corey's federal income tax returns. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. This exception encompasses information made confidential by other statutes. Section 6103 of title 26 of the United States Code makes federal income tax return information confidential. *See* 26 U.S.C. § 6103(a); Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). The city must withhold the tax returns we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

JCDecaux raises section 552.110(b) of the Government Code, which 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. *Id.* § 552.110(b); ORD 661 at 5-6.

JCDecaux contends portions of the submitted information, including its pricing and client information, are commercial or financial information, release of which would cause the company substantial competitive harm. Upon review, we find JCDecaux has established the release of its customer information would cause it substantial competitive injury. Nevertheless, to the extent JCDecaux has published any of the customer information at issue on its website, this information is not confidential under section 552.110. Accordingly, the city must withhold JCDecaux's customer information in the submitted documents under

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.110(b), provided JCDecaux has not published the information on its website. However, upon review, we find JCDecaux has failed to establish release of any of the remaining information would cause the company substantial competitive harm. Additionally, we note the pricing information of winning bidders of a government contract, such as JCDecaux, is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see also* Open Records Decision No. 319 at 3 (1982) (information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing is not ordinarily excepted from disclosure under statutory predecessor to section 552.110). *See generally* Dep't of Justice Guide to the Freedom of Information Act 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is cost of doing business with government). We therefore conclude the city may not withhold the remaining information under section 552.110(b).

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the city must withhold the information we have marked under section 552.136 of the Government Code.

We note some of the remaining 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.

In summary, the city must withhold the tax returns we have marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code. The city must withhold JCDecaux's customer information under section 552.110(b) of the Government Code, provided JCDecaux has not published the information on its website. The city must withhold the information we have marked under section 552.136 of the Government Code. The city must release the remaining information to the respective requestors; however, the city may release any information protected by copyright only 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](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,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLK/cz

Ref: ID# 540179

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)

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(w/o enclosures)

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President  
Corey S/B Joint Venture  
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Atlanta, GA 30312  
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