



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 14, 2014

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

OR2014-20790

Dear Ms. Evans:

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# 543107 (GC No. 21745).

The City of Houston (the "city") received a request for reports used to determine the amount of city tax rebate generated for Dynamo Stadium, LLC ("Dynamo") since January 2011 and a list of checks and dollar amounts written in response to the reports. You state the city does not have some of the information requested.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of Dynamo. Accordingly, you state, and provide documentation showing, you notified Dynamo 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 interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted argument

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<sup>1</sup>This ruling does not address the public availability of any information that is not responsive to the request, and the district attorney's office is not required to release such information in response to the request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit documents stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 321.3022 of the Tax Code, which provides in part:

(a-1) Except as otherwise provided by this section, the [Texas Comptroller of Public Accounts (the "comptroller")] on request shall provide to a municipality or other local governmental entity that has adopted a tax under [chapter 321 of the Tax Code]:

(1) information relating to the amount of tax paid to the municipality or other local governmental entity under [chapter 321 of the Tax Code] during the preceding or current calendar year by each person doing business in the municipality or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$5,000; and

(2) any other information as provided by this section.

...

(f) Information received by a municipality or other local governmental entity under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting, for internal auditing of a tax paid to the municipality or other local governmental entity under [chapter 321 of the Tax Code], or for the purpose described in Subsection (g).

(g) Information received by a municipality or other local governmental entity under Subsection (b) may be used by the municipality or other local governmental entity to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

Tax Code § 321.3022(a-1), (f)-(g). You state the submitted information contains sales tax information the city received from the comptroller's office pursuant to section 321.3022(a-1). We have no indication the information at issue is being sought for economic forecasting, to conduct an internal audit, or on behalf of the city to determine revenue sharing under a revenue sharing agreement. Based on the submitted representations and our review, we find the information we have marked is confidential under section 321.3022(f) of the Tax Code, and the city must withhold it under section 552.101 of the Government Code. However, the

city has failed to demonstrate the city received the remaining information at issue from the comptroller pursuant to section 321.3022(a-1). Consequently, the remaining information at issue may not be withheld under section 552.101 of the Government Code in conjunction with section 321.3022(f) of the Tax Code.

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). We have not received comments from Dynamo. Thus, Dynamo has failed to demonstrate it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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 submitted information on the basis of any proprietary interest Dynamo may have in the information.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 321.3022(f) of the Tax Code. The remaining 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](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,



Daniel Olds  
Assistant Attorney General  
Open Records Division

DO/akg

Ref: ID# 543107

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Ted Fikre  
Dynamo Stadium, LLC c/o AEG  
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Los Angeles, California 90015  
(w/o enclosures)