



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 25, 2014

Mr. Janet M. Spugnardi
Senior Assistant City Attorney
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2014-21464

Dear Mr. Spugnardi:

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# 544449.

The City of Irving (the "city") received a request for records showing the names of all businesses that paid the city more than \$2.5 million in sales and use taxes during a specified time period. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the city states release of the submitted information may implicate the proprietary interests of Hudson Energy Services ("Hudson"). Accordingly, the city states, and provides documentation showing, it notified Hudson 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 exception the city claims and reviewed the submitted representative sample of information.¹

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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 Hudson explaining why the submitted information should not be released. Therefore, we have no basis to conclude Hudson 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest Hudson may have in the information.

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). The city states the submitted information contains sales and use tax information derived from information received from the comptroller 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 it 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. As the city raises no other exceptions to disclosure, 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, 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 544449

Enc. Submitted documents

c: Requestor
(w/o enclosures)