



January 28, 2015

Mr. Robert N. Jones, Jr.
Assistant General Counsel
Texas Workforce Commission
101 East 15th Street, Room 266
Austin, Texas 78778-0001

OR2015-01629

Dear Mr. Jones:

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# 551657 (TWC Tracking No. 140703-009).

The Texas Workforce Commission (the "commission") received a request for information pertaining to Skills Development Fund grants and Rackspace Hosting, Inc. (Rackspace).¹ The commission does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the commission states, and provides documentation showing, it notified Fox Tank Company, Rackspace, TASC, Inc., and Weatherford of the commission's receipt of the request for information and of the right of each to submit arguments to this office as to why the requested information should not be

¹The commission sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

released.² See Gov't Code § 552.305(d); see also Open Records Decision No. 542 at 3 (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.

Initially, we note you informed the requestor some of the responsive information was available on the commission's website. Section 552.228 of the Government Code requires a governmental body to provide a requestor with a "suitable copy" of requested public information. Gov't Code § 552.228(a). We also note "[a] public information officer does not fulfill his or her duty under the Act by simply referring a requestor to a governmental body's website for requested public information." Open Records Decision No. 682 at 7 (2005). Instead, section 552.221 of the Government Code requires a governmental body "to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail." *Id.*; see Gov't Code § 552.221(b). Thus, the commission must provide to the requestor access to or copies of the responsive information that is on the commission's website. Nevertheless, we note a requestor may agree to accept information on a governmental body's website in fulfillment of a request for information under the Act. See ORD 682 at 7.

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 requested information relating to it should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, none of the interested third parties has submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the submitted information constitutes proprietary information of these third parties, and the commission may not withhold any portion of it on that basis. See 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 that information is trade secret), 542 at 3. Accordingly, the commission must release the submitted information to the requestor.

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.

²We note the commission did not comply with the requirements of section 552.301 of the Government Code. See Gov't Code § 552.301. Nevertheless, third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. See *id.* §§ 552.007, .302. Thus, we will consider whether the submitted information must be withheld under the Act on that ground.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 551657

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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