



February 24, 2015

Ms. Kasey Feldman-Thomason
General Law Attorney
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711-3326

OR2015-03601

Dear Ms. Feldman-Thomason:

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# 555190 (PUC ID No. 2014-12-012).

The Public Utility Commission of Texas (the "commission") received a request for the bid tabulation, award letter, and winning proposal for a specified request for proposals. You state you have released some information. Although you take no position as to the public availability of the remaining requested information, you state its release may implicate the proprietary interests of the National Federation of the Blind of Texas ("NFBT"). Accordingly, you state, and provide documentation demonstrating, you notified NFBT of the request for information and of its right to submit arguments to this office as to why the requested 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 Act in certain circumstances).

Initially, we must address the commission's obligations under the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the

written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). We note the commission received the request for information via e-mail after 5 p.m. on December 3, 2014, which you state is after the commission's business day concluded. As such, we find the commission received the request for information on December 4, 2014. We understand the commission was closed for Christmas holiday on December 24-26, 2014. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by section 552.301(e) by December 30, 2014. However, as of the date of this letter, you have not submitted to this office a copy of the specific information requested or a representative sample of such information. Consequently, we find the commission failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

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. Gov't Code § 552.305(d)(2)(B). However, as of the date of this letter, we have not received comments from NFBT explaining why its information should not be released. Therefore, we have no basis to conclude NFBT has a protected proprietary interest in any of the requested 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 commission may not withhold the requested information upon the basis of any proprietary interests of NFBT. Thus, we have no choice but to order the commission to release the requested information in accordance with section 552.302 of the Government Code. If you believe this

information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 555190

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Stephen Tompkins
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Austin, Texas 78752
(w/o enclosures)