



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 12, 2015

Mr. Jeffrey W. Giles  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2015-09218

Dear Mr. Giles:

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# 563366 (GC No. 22123).

The City of Houston (the "city") received a request for all bids submitted in response to request for proposals numbers H08-HR1-2015-001, H08-IR1-2015-003, and H08-IR2-2015-004 for concessions at George Bush International Airport and William P. Hobby Airport. You take no position as to whether the submitted information is excepted under the Act.<sup>1</sup> However, you state release of the submitted information may implicate the proprietary interests of 4 Families of IAH, L.L.C. ("4 Families"); ATU Americas, L.L.C. ("ATU"); Creative Food Group, L.L.C. ("Creative"); Delaware North Companies Travel Hospitality Service, Inc. ("Delaware"); Dufry NA IAH JV HG ("Dufry"); Duty Free Americas Houston, L.L.C. ("DFAH"); H Town Coffee House Joint Venture ("H Town"); HG Houston Retailers JV ("HG"); Hojeij Branded Foods, Inc. ("Hojeij"); Host International, Inc. ("Host"); JDDA Houston 14, L.L.C. ("JDDA"); LaTrelle's Galley, L.P. ("LaTrelle's"); MRG Houston (JV), L.L.C. ("MRG"); Paradies-Houston 2014, L.L.C. ("Paradies"); Prestige Duty Free Houston, L.L.C. ("Prestige"); SSP America, Inc. ("SSP"); Sun IAH Airport Concessions, L.L.C. ("Sun"); and Travel Retail Group Houston, L.L.C. ("Travel"). Accordingly, you state, and provide documentation showing, you notified 4 Families, ATU, Creative, Delaware, Dufry, DFAH, H Town, HG, Hojeij, Host, JDDA, LaTrelle's, MRG, Paradies, Prestige, SSP, Sun, and Travel of the request for information and of the right of

---

<sup>1</sup>Although the city initially raised section 552.104 of the Government Code for the submitted information, you inform this office the city has withdrawn its claim under this exception. See Gov't Code §§ 552.301, .302.

each 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 received comments from 4 Families, ATU, Creative, Delaware, DFAH, H Town, Hojeij, LaTrelle's, Paradies, Prestige, and Travel. We have reviewed the submitted information and the submitted arguments.<sup>2</sup>

Initially, we note some of the submitted information is not responsive to the instant request for information because it does not pertain to any of the specified requests for proposals. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.<sup>3</sup>

Next, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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 id.* § 552.301(e). The city received the request for information on February 19, 2015. You do not inform us the city was closed for any business days between February 19, 2015, and March 12, 2015. Accordingly, you were required to provide the information required by section 552.301(e) by March 12, 2015. However, the package in which the city provided the information required by section 552.301(e) was received by this office on March 20, 2015, and does not bear a discernible postmark. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling

---

<sup>2</sup>We note the submitted information includes the requestor's proposals. As we do not assume the requestor seeks access to the requestor's own proposals, we do not address the public availability of that information.

<sup>3</sup>As we are able to make this determination, we need not address the public availability of the submitted information pertaining to 4 Families, ATU, Creative, Dufry, DFAH, H Town, Hojeij, Host, JDDA, LaTrelle's, Prestige, SSP, and Sun.

reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (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* ORD 630. Because third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider the submitted arguments against disclosure of the responsive information.

Next, 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from HG or MRG explaining why the submitted information should not be released. Therefore, we have no basis to conclude either HG or MRG 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 the submitted information on the basis of any proprietary interest HG or MRG may have in the information.

Travel argues its information was supplied to the city with the expectation the confidentiality of the information would be maintained. However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov't Code § 552.110). Consequently, unless the information falls within an exception to disclosure, the city must release it, notwithstanding any expectations or agreement specifying otherwise.

Paradies raises section 552.104 of the Government Code for its information. Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov't Code § 552.104. We note section 552.104 protects the interests of governmental bodies, not third parties. *See* Open Records Decision No. 592 at 8 (1991) (purpose of section 552.104 is to protect governmental body's interest in competitive bidding situation). As the city does not argue section 552.104 is applicable, we will not consider Paradies's claim under this section. *See id.* (section 552.104 may be waived by governmental body). Therefore, the city may not withhold any of the submitted information under section 552.104 of the Government Code.

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>4</sup> Gov’t Code § 552.101. This exception encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns). Section 6103(b) defines the term “return information” as “a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the submitted tax return information, which we have marked, is confidential under section 6103(a) of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

Next, Delaware, Paradies, and Travel each argue portions of their information are excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov’t Code § 552.110(a)-(b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be:

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business. . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates

---

<sup>4</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).

or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.<sup>5</sup> RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983). We note pricing information pertaining to a particular contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." RESTATEMENT OF TORTS § 757 cmt. b; *see also Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978).

Section 552.110(b) 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.*; *see also* ORD 661 at 5.

Delaware, Paradies, and Travel each argue portions of their information consist of commercial information the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Delaware and Paradies have each demonstrated portions of the information at issue constitute commercial or financial information, the release of which would cause substantial competitive injury.

---

<sup>5</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Accordingly, the city must withhold this information, which we have marked, under section 552.110(b) of the Government Code. However, we find Delaware, Paradies, and Travel have failed to demonstrate the release of any of the remaining information would result in substantial harm to the companies' competitive positions. See Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Furthermore, we note a contract was awarded to Paradies. This office considers the prices charged in government contract awards to be a matter of strong public interest; thus, the pricing information of a winning bidder 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 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 a cost of doing business with government). Further, the terms of a contract with a governmental body are generally not excepted from public disclosure. See Gov't Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Accordingly, the city may not withhold any of the remaining information at issue under section 552.110(b) of the Government Code.

Further, Delaware and Paradies each argue portions of their information constitute trade secrets under section 552.110(a) of the Government Code. Upon review, we conclude Delaware and Paradies have failed to establish a *prima facie* case that any portion of the remaining information meets the definition of a trade secret. We further find Delaware and Paradies have not demonstrated the necessary factors to establish a trade secret claim for the remaining information. See ORD 402. Therefore, the city may not withhold any of the remaining information under section 552.110(a) of the Government Code.

The remaining documents include information that is subject to section 552.136 of the Government Code. Section 552.136 provides, "Notwithstanding 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"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, the city must withhold the routing, bank account, and insurance policy numbers we have marked under section 552.136 of the Government Code.

We note some of the materials at issue 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 submitted tax return information, which we marked, under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The city must withhold the information we marked under section 552.110(b) of the Government Code. The city must withhold the routing, bank account, and insurance policy numbers we marked under section 552.136 of the Government Code. The city must release the remaining responsive information; however, any information that is subject to copyright may be released 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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 563366

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Anna Sabayrac Marchand  
Assistant General Counsel  
for 4 Families of IAH, L.L.C.  
Law Offices of Frank Markantonis  
13939 Northwest Freeway, Suite 100  
Houston, Texas 77040  
(w/o enclosures)

Ms. Mary F. Keller  
for Delaware North Companies  
Travel Hospitality Service, Inc.  
Winstead  
401 Congress Avenue, Suite 2100  
Austin, Texas 78701  
(w/o enclosures)

Mr. David Taney  
General Counsel  
Duty Free Americas Houston, L.L.C.  
6100 Hollywood Boulevard,  
Seventh Floor  
Hollywood, Florida 33024  
(w/o enclosures)

Mr. Michael R. Mullaney  
Executive Vice President  
HG Houston Retailers JV  
One Meadowlands Plaza, 11th Floor  
East Rutherford, New Jersey 07073  
(w/o enclosures)

Mr. Anthony C. Alessi  
Vice President Business  
Development  
Host International, Inc.  
6905 Rockledge Drive  
Bethesda, Maryland 20817  
(w/o enclosures)

Mr. Nicholas Hall  
Counsel for LaTrelle's Galley, L.P.  
Hall Attorneys  
4265 San Felipe, Suite 1100  
Houston, Texas 77027  
(w/o enclosures)

Mr. Glenn A. Reiner  
Counsel for Creative Food Group,  
L.L.C.  
Siegel & Reiner, L.L.P.  
900 Third Avenue  
New York, New York 10022  
(w/o enclosures)

Mr. Michael R. Mullaney  
Executive Vice President  
Dufry NA IAH JV HG  
One Meadowlands Plaza, 11th Floor  
East Rutherford, New Jersey 07073  
(w/o enclosures)

Mr. Anthony R. Chase  
CEO  
H Town Coffee House Joint Venture  
3311 West Alabama Street  
Houston, Texas 77098  
(w/o enclosures)

Mr. David J. Goodman  
Counsel for Hojeij Branded Foods, Inc.  
Bourland, Wall & Wenzel, P.C.  
301 Commerce Street, Suite 1500  
Fort Worth, Texas 76102-4115  
(w/o enclosures)

Mr. Mario F. Cediell  
Vice President  
JDDA Houston 14, L.L.C.  
P.O. Box 60496  
Houston, Texas 77365  
(w/o enclosures)

Mr. Michael C. Wilkins  
President & CEO  
MRG Houston (JV), L.L.C.  
5385 Wynn Road  
Las Vegas, Nevada 89118  
(w/o enclosures)

Ms. Tracy H. Lautenschlager  
for Paradies-Houston 2014, L.L.C.  
Greenberg Traurig, P.A.  
401 East Las Olas Boulevard,  
Suite 2000  
Fort Lauderdale, Florida 33301  
(w/o enclosures)

Mr. Roger Worrell  
CEO  
SSP America, Inc.  
19465 Deerfield Avenue, Suite 105  
Lansdowne, Virginia 20176  
(w/o enclosures)

Mr. Jonathan M. Potash  
President  
Travel Retail Group Houston, L.L.C.  
555 NE 185th Street  
Miami, Florida 33179  
(w/o enclosures)

Mr. J. McNally  
for Prestige Duty Free Houston, L.L.C.  
4 Meadowview Road  
Hingham, Massachusetts 02043  
(w/o enclosures)

Mr. Guillermo Perales  
CEO & Manager  
Sun IAH Airport Concessions, L.L.C.  
111 FM 1690 Road Northwest  
Houston, Texas 77090  
(w/o enclosures)