



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2016

Mr. Robert Davis
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2016-06825

Dear Mr. Davis:

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# 603135 (PIR No. 821348).

The City of Austin (the "city") received a request for food and beverage concessions reports and retail tenant quarterly reports from the city's airport during a specified time period. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified 24 Hour Flowers, Inc., Auntie Anne's/Lone Star Dreams, Fara/Café, News and Gift Shops International–Austin Joint Venture NGSi–NL, LLC, Taste Inc. d/b/a Vino Volo, and Wok & Roll of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.¹ *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 reviewed the submitted information.

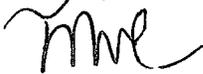
¹We note, and you acknowledge, the city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider whether the city may withhold the submitted information on that basis. *See id.* §§ 552.007, .302, .352.

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). As of the date of this letter, we have not received comments from any of the third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of the third parties 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 any of the information at issue on the basis of any proprietary interest the third parties may have in it. As no exceptions to disclosure have been raised, we find the city must release the submitted information.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/som

Ref: ID# 603135

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Loren Watkins
24 Hour Flowers, Inc.
P.O. Box 4848
Palm Springs, California 92263
(w/o enclosures)

Mr. Nasrin Farahani
Fara/Café
3724 Jefferson Street, Suite 210
Austin, Texas 78731
(w/o enclosures)

Mr. Jon Gologorsky
Taste, Inc. d/b/a Vino Volo
222 Kearny Street, Suite 310
San Francisco, California 94108
(w/o enclosures)

Ms. Iris Ren
Wok & Roll
108 Phil Mickelson Court
Round Rock, Texas 78664
(w/o enclosures)

Mr. Michael Bottom
Auntie Anne's/Lone Star Dreams
605 Shady Hollow Drive
Georgetown, Texas 78628-2905
(w/o enclosures)

Mr. Jeff Sailer
News and Gift Shops International–Austin
Joint Venture NGSI–NL, LLC
c/o Retail North America
60 East 42nd Street, Suite 3410
New York, New York 10165
(w/o enclosures)

Mr. Jeff Sailer
News and Gift Shops International–Austin
Joint Venture NGSI–NL, LLC
c/o Retail North America
4138 Fossil Fern
San Antonio, Texas 78261
(w/o enclosures)

Mrs. Deborah Parker
24 Hour Flowers, Inc.
P.O. Box 180373
Austin, Texas 78718
(w/o enclosures)