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ATTORNEY GENERAL OF TEXAS

March 30, 2016

Ms. Meredith Riede
City Attorney
City of Sugar Land
P.O. Box 110
Sugar Land, Texas 77487-0110

OR2016-07096

Dear Ms. Riede:

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# 603397.

The City of Sugar Land (the "city") received a request for the Greater Fort Bend Economic Development Council ("GFBEDC") board of director's meeting agendas, meeting minutes, meeting papers, and communications during a specified time period. Although we understand 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 GFBEDC 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). You state you notified GFBEDC. We have received comments from GFBEDC. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We note GFBEDC asserts an exception to the required public disclosure of information the city has not submitted for our review. This ruling does not address information beyond what the city has submitted to us for review. *See id.* § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). Accordingly, this ruling is limited to the information the city submitted as responsive to the request for information. *See id.*

GFBEDC asserts the submitted information does not consist of public information that is subject to disclosure under the Act. The Act is applicable only to “public information.” *See id.* §§ 552.002, .021. Section 552.002(a) reads as follows:

(a) In this chapter, “public information” means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer’s or employee’s official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Id. § 552.002(a-1). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov’t Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987).

GFBEDC argues the submitted information is not “public information” subject to the Act because GFBEDC is a private entity. GFBEDC asserts the information at issue was produced by GFBEDC for its internal use and was not prepared on behalf of a governmental body. Upon review, we find the city maintains the submitted information in connection with

the transaction of its official business. Thus, the submitted information constitutes “public information” as defined by section 552.002(a). Accordingly, this information is subject to the Act and must be released, unless it falls within an exception to public disclosure under the Act. *See* Gov’t Code §§ 552.006, .021, .301, .302. Therefore, we will address the submitted arguments against its disclosure under the Act.

Next, GFBEDC asserts the submitted minutes of its Board of Directors and Executive Committee meetings are confidential under section 551.104 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.” *Id.* § 552.101. This exception encompasses information other statutes make confidential, including section 551.104 of the Government Code which provides, in part, “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” *Id.* § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See* Gov’t Code § 551.146(a)-(b); *see also* Open Records Decision No. 495 at 4 (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101).

GFBEDC asserts a portion of the submitted information consists of minutes of closed, non-public meetings. We note the Open Meetings Act applies to governmental bodies. *See* Gov’t Code §§ 551.002 (every meeting of governmental body shall be open to public, except as provided by chapter 551), .001(3) (definition of “governmental body”). As GFBEDC acknowledges, it is a private entity. Thus, the provisions of the Open Meeting Act do not apply to its meeting minutes. Therefore, the city may not withhold the minutes under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.

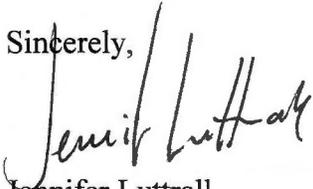
GFBEDC states portions of the submitted information are excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” *Id.* § 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* Open Records Decision No. 661 at 5 (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).

GFBEDC argues some of its information consists of commercial information, the release of which would cause it substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find GFBEDC has demonstrated the information we have marked constitutes commercial or financial information, the release of which would cause the company substantial competitive injury. Accordingly, the city must withhold this information under section 552.110(b) of the Government Code. As no other exceptions to disclosure have been raised, the city must release the remaining 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 603397

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)