



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 2, 2016

Ms. Stacie S. White  
Counsel for the City of Haltom City  
Taylor Olson Adkins Sralla Elam, L.L.P.  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107

OR2016-09863

Dear Ms. Stacie:

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# 608099.

The City of Haltom (the "city"), which you represent, received a request for information pertaining to sales and use tax audit services and sales tax analysis reporting services.<sup>1</sup> You state you will redact social security numbers under section 552.147(b) of the Government Code and information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim a

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<sup>1</sup>You note the city sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the

portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of MBIA MuniServices Company (“MBIA”). Accordingly, the city states, and provides documentation showing, it notified MBIA 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). We have considered the exception the city claims and reviewed the submitted information.

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 MBIA explaining why the submitted information should not be released. Therefore, we have no basis to conclude MBIA 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest MBIA may have in the information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 321.3022 of the Tax Code, which provides, in part:

(a-1) Except as otherwise provided by this section, the [Texas Comptroller of Public Accounts (the “comptroller’s office”)] on request shall provide to a municipality or other local governmental entity that has adopted a tax under [chapter 321 of the Tax Code]:

(1) information relating to the amount of tax paid to the municipality or other local governmental entity under [chapter 321 of the Tax Code] during the preceding or current calendar year by each person doing business in the municipality or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$5,000; and

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necessity of requesting an attorney general decision.

(2) any other information as provided by this section.

...

(f) Information received by a municipality or other local governmental entity under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting, for internal auditing of a tax paid to the municipality or other local governmental entity under [chapter 321 of the Tax Code], or for the purpose described in Subsection (g).

(g) Information received by a municipality or other local governmental entity under Subsection (b) may be used by the municipality or other local governmental entity to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

Tax Code § 321.3022(a-1), (f)-(g). The city states the submitted information may contain sales tax information received from the comptroller's office pursuant to section 321.3022(a-1). We have no indication the information at issue is being sought for economic forecasting, to conduct an internal audit, or on behalf of the city to determine revenue sharing under a revenue sharing agreement. Upon review, we are unable to determine whether the information in Exhibit B was obtained from the comptroller's office. Accordingly, we must rule conditionally. Thus, to the extent the city obtained the information in Exhibit B from the comptroller's office, the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 321.3022(f) of the Tax Code. To the extent the information in Exhibit B was not obtained from the comptroller's office, it may not be withheld under section 552.101 in conjunction with section 321.3022(f) and must be released. However, the city has failed to demonstrate it received the remaining information from the comptroller's office pursuant to section 321.3022(a-1). Consequently, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 321.3022(f) of the Tax Code. As the city raises no other exceptions to disclosure, 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](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,

A handwritten signature in black ink, appearing to read 'Cristian Rosas-Grillet', with a long horizontal flourish extending to the right.

Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/bw

Ref: ID# 608099

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)