



August 3, 2001

Mr. Frank J. Garza  
City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2001-3378

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150298.

The City of San Antonio (the "city") received a written request for the following information regarding "Cable Television Franchise Agreements":

1. All **quarterly financial statements** filed pursuant to Section 16 c. of Ordinance #49433.
2. All **annual financial reports** filed pursuant to Section 16 d. of Ordinance #49433.
3. All **audit reports** made by the City of San Antonio pursuant to Section 16 e. of Ordinance #49433. [Emphasis in original.]

The requestor additionally seeks "any quarterly financial statements, annual financial reports, and audit reports relating to the franchise fee that have been filed pursuant to any ordinance that has succeeded, amended, and/or supplemented Ordinance #494733." You state that the city will release portions of the requested information. You contend that other requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.110 of the Government Code. However, rather than submitting arguments to this office as to why these exceptions apply to the information at issue, you have requested a decision from this office pursuant to section 552.305 of the Government Code, which allows governmental bodies to rely on third parties having a privacy or property interest in the information to submit their own arguments as to why the requested information is excepted from public disclosure.

In accordance with section 552.305(d), the city informed Time Warner Cable (“Time Warner”), the company that has a proprietary interest in the information at issue, of the records request and invited them to submit arguments to this office as to why any portion of the information at issue should be withheld from the public. Time Warner timely submitted its comments to our office. Time Warner authorizes the release of some of the information you submitted to this office and makes no comment regarding the release of other submitted information. The city therefore must provide the requestor with the documents we have marked to be released.

Time Warner contends that other documents, or specific portions thereof, are excepted from public disclosure. Time Warner first contends that certain information contained in the requested documents is excepted from public disclosure because it is information that Time Warner was not required to submit to the city pursuant to the franchise agreement. We note, however, that section 552.002(a) of the Government Code defines the meaning of “public information” as follows:

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

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Consequently, it is immaterial for purposes of this ruling that some of the information contained in the requested documents consists of information other than that which was required to be submitted to the city under the franchise agreement. The information at issue clearly has been “collected, assembled, or maintained” by the city “in connection with the transaction of official business” and thus is “public information” that may be withheld from the public only to the extent that it comes within an exception to disclosure. *See* Open Records Decision No. 549 (1990) (finding that holding in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), makes clear that virtually all information in physical possession of governmental body is “public information” subject to chapter 552 of Government Code; thus, information collected by public employee in the course of his employment is “information collected . . . in connection with the transaction of official business”).

We additionally note that most of the information at issue is subject to section 552.022(a) of the Government Code, which provides in relevant part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

One such category of information expressly made public under section 552.022(a) is “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body . . . .” Gov’t Code § 552.022(a)(1). Therefore, as prescribed by section 552.022(a), the submitted records must be released to the requestor except to the extent they are made confidential under other law. Because the city is required to withhold information coming within the protection of section 552.110(b), we will consider Time Warner’s arguments under this exception.<sup>1</sup>

Section 552.110(b) of the Government Code protects the property interests of private persons by excepting from disclosure “[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.” The commercial or financial branch of section 552.110 requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. *See* Open Records Decision No. 661 (1999); *see also National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). In this instance, Time Warner has demonstrated how the release of most of the information it seeks to withhold would result in substantial competitive injury. Accordingly, we have marked the information the city must withhold pursuant to section 552.110(b). The remaining information must be released to the requestor, with the following exception.

We also find that certain information is required to be withheld pursuant to section 552.136. The Seventy-seventh Legislature recently added section 552.136 to the Public Information Act,<sup>2</sup> which makes bank account numbers confidential. Senate Bill 694 was passed on

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<sup>1</sup>Although Time Warner also contends that the information at issue is excepted from public disclosure pursuant to section 552.101 of the Government Code, it has made no argument under section 552.101 that is not also subsumed by its arguments under section 552.110(b). Accordingly, we do not further address the applicability of section 552.101.

<sup>2</sup>The Legislature also enacted two other bills that added a section 552.136 to the Public Information Act. One is House Bill 2589, which makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov’t Code § 552.136). The other is Senate Bill 15, which makes information maintained by family violence shelter centers confidential. *See* Act of May 14, 2001, 77th Leg., R.S., S.B. 15, § 1 (to be codified at Gov’t Code § 552.136). In addition, Senate Bill 694 enacted the same language from House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Government Code.

May 14, 2001, and became effective when it was signed by the Governor on May 26, 2001. It provides, in relevant part, as follows:

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;  
or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, 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.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136). Thus, the city must withhold the bank account numbers that appear in the submitted documents under section 552.136 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/RWP/seg

Ref: ID# 150298

Enc. Submitted documents

c: Mr. Roy G. Romo  
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(w/o enclosures)