



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2007

Ms. Janis Kennedy Hampton
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2007-14727

Dear Ms. Hampton:

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# 294421.

The City of Bryan (the "city") received a request for "[a]ll proposals submitted for [the] most recent RFP for [d]epository/[b]anking [s]ervices." You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state that the submitted information may contain proprietary information, and thus, pursuant to section 552.305 of the Government Code, you have notified Bank of America, Wells Fargo Bank ("Wells Fargo"), Citibank, and First National Bank ("First National") of the request and of each bank's right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered the submitted argument 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 requested information relating to it should be withheld from disclosure. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, none of the banks you notified have submitted to this office any reasons explaining why the requested information should not be released. Therefore, these banks have not provided us with any basis to conclude that they have protected proprietary interests in any of the requested information. *See 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, we conclude that the city may not withhold any portion of the requested information on the basis of any proprietary interest Bank of America, Wells Fargo, Citibank, and First National may have in the information.

Next, we address the city's claim under section 552.101 of the Government Code. This section excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Gov't Code § 552.101*. Section 552.101 encompasses information that another statute makes confidential. You raise section 552.101 in conjunction with section 252.049 of the Local Government Code, which provides as follows:

(a) Trade secrets and confidential information in competitive sealed bids are not open for public inspection.

(b) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

Local Gov't Code § 252.049. This statutory provision merely duplicates the protection that section 552.110 of the Government Code provides to trade secret and commercial or financial information. In this instance, there has been no demonstration that any of the submitted information qualifies as either a trade secret or as confidential commercial or financial information for purposes of section 552.110. *See Gov't Code § 552.110(a)-(b)*. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 252.049 of the Local Government Code.

We note that the submitted information contains account numbers. Section 552.136 of the Government Code provides as follows:

(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.

Gov’t Code § 552.136.¹ The city must withhold the account numbers we have marked pursuant to section 552.136 of the Government Code.

We also note that portions of the submitted information are 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 protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, 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. *See* Open Records Decision No. 550 (1990).

In summary, the city must withhold the account numbers we have marked under section 552.136 of the Government Code. The remaining information must be released, but any copyrighted information may only be released in accordance with copyright law.

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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jb

Ref: ID# 294421

Enc. Submitted documents

c: Ms. Angela Dulak
Compass Bank
2405 Texas Avenue South
College Station, Texas 77840
(w/o enclosures)

Ms. Kathy Lynch
Citibank
P.O. Box 1033
Bryan, Texas 77805
(w/o enclosures)

Ms. Melisa Atkinson
Bank of America
515 Congress Avenue
Austin, Texas 78701-3503
(w/o enclosures)

Mr. Mike Holmgreen
First National Bank
P.O. Box 833
Bryan, Texas 77805
(w/o enclosures)

Mr. Mervin D. Peters
Wells Fargo Bank
3000 Briarcrest Drive
Bryan, Texas 77802
(w/o enclosures)