



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2007

Ms. Brenda McDonald
Deputy City Attorney
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2007-16736

Dear Ms. McDonald:

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# 298133.

The City of Irving (the "city") received a request for copies of all documents related to the agreement between the city and Comerica Bank regarding the line of credit between Comerica Bank and McDougal Companies. You state that you have provided the requestor with a portion of the requested information. You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code. You further indicate that the release of the submitted information may implicate the proprietary interests of McDougal Companies. Pursuant to section 552.305 of the Government Code, you were required to notify McDougal Companies of the request and of its opportunity to submit comments to this office explaining why the submitted information should be withheld from disclosure. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by an attorney representing the requestor. *See* Gov't Code § 552.304 (interested

third party may submit comments explaining why submitted information should or should not be released).

The city claims that the submitted information is excepted from disclosure under section 552.110(b) of the Government Code. By its terms, section 552.110 only protects the interests of the person from whom the information was obtained. This provision does not protect the interests of the governmental body that receives proprietary information, nor does it allow a governmental body to assert section 552.110 for information it creates. However, a government body may assert section 552.110 on behalf of an interested third party. Therefore, we will address the city's claim on behalf of McDougal Companies.

Section 552.110(b) of the Government Code 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[.]” Gov’t Code § 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. Gov’t Code § 552.110(b); *see also Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

After reviewing the city's arguments and the information at issue, we find that the city has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the submitted information would cause McDougal Companies substantial competitive harm. *See* ORD 661 at 5-6 (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm); *see also* Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision No. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency). Furthermore, we note that as of the date of this letter, McDougal Companies has not submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Thus, McDougal Companies has not provided any basis to conclude that the release of any portion of the submitted information would implicate its proprietary interests. We therefore conclude that the city may not withhold any of the submitted information under section 552.110 of the Government Code. As you raise no further exceptions against disclosure, the submitted information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/mcf

Ref: ID# 298133

Enc. Submitted documents

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