



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 29, 2008

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

OR2008-07303

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# 311218.

The City of Bryan (the "city") received two requests from separate requestors for the city's comparison of responses to RFA number 08-040. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. You also state that the city believes a portion of the information may involve the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the city notified the third parties of the request for information and of their right to submit arguments explaining why certain information should not be released.<sup>1</sup> *See* Gov't Code § 552.305 (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 in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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:

---

<sup>1</sup>The notified third parties are: Wells Fargo Bank, N.A.; First National Bank d/b/a Frank Bank, SSB; Compass Bank; Citibank, N.A.; and JPMorgan Chase Bank, N.A.

(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. However, as of the date of this letter none of the third parties have submitted arguments explaining why their requested information should not be released. *See* Gov't Code § 552.305(d)(2)(B) (interested third party allowed ten business days after date of its receipt of the governmental body's 552.305(d) notice to submit reasons why information relating to it should be withheld from disclosure). Therefore, these companies 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. As no other exception to disclosure of this information has been raised, it must be released to the requestor.

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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/eeg

Ref: ID# 311218

Enc. Submitted documents

c: Ms. Kathy Lynch  
Citibank, N.A.  
1111 Briar Crest Drive  
Bryan, Texas 77802  
(w/o enclosures)

Mr. Clay Riebe  
Market President/Vice President  
Citibank, N.A.  
1111 Briar Crest Drive  
Bryan, Texas 77802  
(w/o enclosures)

Ms. Carol S. Gravis  
Vice President, Community Banking  
Wells Fargo Bank, N.A.  
3000 Briarcrest Drive  
Bryan, Texas 77802  
(w/o enclosures)

Ms. Annie Jackson  
Wells Fargo Bank, N.A.  
3000 Briarcrest Drive  
Bryan, Texas 77802  
(w/o enclosures)

Mr. Ivan Olson  
President  
First National Bank d/b/a Frank Bank, SSB  
P.O. Box 833  
Bryan, Texas 77805  
(w/o enclosures)

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

Ms. Pamela J. Davis  
Senior Vice President  
JPMorgan Chase Bank  
707 Travis, Floor 09  
Houston, Texas 77002  
(w/o enclosures)