



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 27, 2008

Mr. Alan P. Petrov
Johnson Radcliffe Petrov & Bobbitt, PLLC
1001 McKinney, Suite 1000
Houston, Texas 77002-6424

OR2008-08737

Dear Mr. Petrov:

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# 314232.

The City of Bellaire (the "city"), which you represent, received a request for the pricing information submitted to the city in response to a request for applications for bank depository services. You state that the city has released some of the requested information. Although you take no position regarding the public availability of the submitted information, pursuant to section 552.305 of the Government Code you have notified Amegy Bank ("Amegy"), Bank of America, Comerica Bank, Compass Bank ("Compass"), Frost Bank, JP Morgan Chase, and Wells Fargo Bank ("Wells Fargo") of their right to submit arguments to this office as to why the requested information should not be released.¹ *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 Act in certain circumstances). Amegy, Bank of America, Compass, and Wells Fargo each object to the release of the submitted information, but Bank of America raises no exceptions to disclosure under the Act.² We have considered all of the submitted arguments and have reviewed the submitted information.

¹We note that the city states it received correspondence from Comercia Bank, Frost Bank, and JP Morgan Chase wherein they made no claim of confidentiality. Further, we note that the city has withdrawn its claim under section 552.104 of the Government Code.

²You have forwarded to this office correspondence from Amegy, Bank of America, Compass, and Wells Fargo requesting that the submitted information not be released. We will treat that correspondence as the third parties' responses under section 552.305 of the Government Code. *See* Gov't Code § 552.305(d); ORD 542. We note that Wells Fargo has also submitted a brief directly to this office.

Bank of America contends that its submitted pricing information is excepted from disclosure because it is marked "confidential to Bank of America" and was intended solely for the city's use. We note that information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through a contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987). Consequently, unless Bank of America's information falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary. As Bank of America does not claim an exception to disclosure, Bank of America's information must be released to the requestor.

Section 552.110 protects the proprietary interests of private parties with respect to two types of information: (1) "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and (2) "commercial 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(a)-(b). We understand Amegy, Compass, and Wells Fargo to claim an exception under section 552.110(b) for portions of their information. Section 552.110(b) 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. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review of the arguments and the information at issue, we find that release of Compass and Wells Fargo's pricing information would cause each company substantial competitive harm. Accordingly, the city must withhold the information we have marked under section 552.110(b). However, we find that Amegy, Compass, and Wells Fargo have not made the showing required by section 552.110(b) that the release of any of the remaining information would be likely to cause these parties any substantial competitive harm. Further, we note that the pricing information of a winning bidder, such as Amegy in this instance, is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors); *see generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Moreover, we believe the public has a strong interest in the release of prices in government contract awards. *See* ORD 514. We therefore conclude that none of the remaining information at issue is excepted from disclosure under section 552.110. *See* Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative), 319 at 3 (1982) (statutory predecessor to Gov't Code § 552.110

generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing).

We also note that some of the submitted information appears to be 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 copyrighted. 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 copyrighted materials, 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 information we have marked under section 552.110(b) of the Government Code. The remaining information must be released to the requestor, but any information protected by copyright must 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 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). If the governmental body does not file suit over 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).

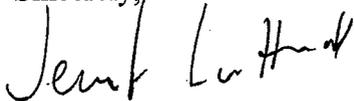
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 314232

Enc. Submitted documents

c: Ms. Melissa Garza
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(w/o enclosures)