



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2008

Ms. Patrice Fogarty
City Secretary
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2008-16943

Dear Ms. Fogarty:

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# 329860.

The City of Missouri City (the "city") received a request for the response submitted by ValleyCrest Golf Course Maintenance Inc. ("ValleyCrest") to a request for proposals for the maintenance of a named municipal golf course. You state that you have released some of the requested information. Although the city takes no position on whether the remaining information is excepted from disclosure, you state that release of this information may implicate the proprietary rights of ValleyCrest. Accordingly, you notified ValleyCrest of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.301(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 received and considered comments from ValleyCrest.

Initially, we note that ValleyCrest argues to withhold from public disclosure certain information that the city did not submit. This ruling does not address information that was not submitted by the city and is limited to the information submitted as responsive by the city. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

ValleyCrest asserts that the submitted information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) excepts 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.” *Id.* § 552.110(b). 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 requested information. *See* Open Records Decision No. 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review of ValleyCrest’s arguments and the submitted information, we find that release of some of ValleyCrest’s customer list, which we have marked, would cause it substantial competitive harm. However, we note that ValleyCrest has made some of its customer information publicly available on its website. Because ValleyCrest has published this information, we find ValleyCrest has failed to demonstrate that it treats this information as confidential proprietary information. Accordingly, the city may not withhold any customer information that has been published on ValleyCrest’s website under section 552.110(b). Further, we determine ValleyCrest has not demonstrated that any portion of the remaining information is excepted under section 552.110(b). *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 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 is too speculative), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). We therefore conclude that the city must only withhold the information we have marked pursuant to section 552.110(b) of the Government Code. The remaining 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). 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 329860

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Gregory A. Pieschala
ValleyCrest Golf Course Maintenance Inc.
24151 Ventura Boulevard
Calabasas, California 91302
(w/o enclosures)