



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2009

Mr. Randall P. Gunter
Fielder & Gunter
310 Main
Liberty, Texas 77575

OR2009-03911

Dear Mr. Gunter:

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# 338170.

The City of Liberty (the "city"), which you represent, received a request for a specified salary survey report. You claim that the submitted information is excepted from disclosure under sections 552.110 and 552.111 of the Government Code. Furthermore, you claim the submitted information may contain proprietary information subject to exception under the Act. Accordingly, you state, and have provided documentation showing, that you notified Waters Consulting Group ("Waters") of the city's receipt of the request for information and of the company's right to submit arguments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted information consists a completed survey report that is subject to section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]

Gov't Code § 552.022(a)(1). In this instance, you assert that the submitted survey report was created to assist the city in developing a new pay plan, the city is using the survey in its process of making new policy regarding the pay plan, and that the pay plan is not currently complete. However, you have failed to argue that the submitted survey report is not complete. Thus, we conclude that the submitted information consists of a completed report and that section 552.022(a)(1) is applicable to it. Accordingly, the submitted information may only be withheld if confidential under other law. Although you seek to withhold the submitted information under section 552.111 of the Government Code, section 552.111 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 subject to waiver). Because this section is not other law that makes information confidential for the purposes of section 552.022, the city may not withhold the submitted information under section 552.111 of the Government Code.

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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Waters explaining why the submitted information should not be released. Thus, we have no basis to conclude Waters has a protected proprietary interest in the submitted information. *See id.* § 552.110; 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 (1990). On behalf of Waters you assert that the submitted information is excepted under section 552.110 of the Government Code. However, we note that section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Therefore, because we have received no arguments from Waters, the city may not withhold any of the submitted information under section 552.110 of the Government Code.

Lastly, you claim the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672.(1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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 at 8-9 (1990). Thus, as you raise no other exception to disclosure of the submitted information, it must be released to the requestor. Any information that is protected by copyright must be released in accordance with copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 338170

Enc. Submitted documents

cc: Requestor
(w/o enclosures)