



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 28, 2009

Ms. Evelyn Njuguna
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77002

OR2009-05622

Dear Ms. Njuguna:

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# 341212.

The Houston Airport System (the "system") received two requests for fuel usage volumes for November of 2008 through February of 2009. Although you take no position as to whether the submitted information is excepted under the Act, you state that release of this information may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation reflecting, that you have notified Atlantic Aviation-Hobby ("Atlantic"), Raytheon, Enterprise Jet Center, Inc. ("Enterprise"), Millionair, and Wilson Air Center ("Wilson") of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code §. 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 reviewed the submitted information.

Initially, we note that although the requestors seek information pertaining to November of 2008 through February of 2009, you have only submitted information for the months of November and December of 2008. Therefore, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note that some of the submitted information is not responsive to the instant request for information because it is outside of the particular time period requested. We have marked this information, which the system need not release in response to this request, and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismiss'd).

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 requested information relating to it should be withheld from disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, Atlantic, Raytheon, Enterprise, Millionair, and Wilson have not submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding that any portion of the responsive information constitutes proprietary information of these third parties, and the system may not withhold any portion of the responsive information on that basis. *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). Therefore, the system may not withhold the responsive information based on any proprietary interests that Atlantic, Raytheon, Enterprise, Millionair, and Wilson may have in the information. As no exceptions to disclosure have been raised, the responsive information must be released.

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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 341212

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: Linda Martin
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(W/o Enclosures)

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