



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 29, 2009

Ms. Sharon Alexander  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701

OR2009-10523

Dear Ms. Alexander:

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# 355994.

The Texas Department of Transportation (the "department") received a request for all information related to the award of TxDOT IFB B442009018807000, including the bidders' proposals, pricing, and decisions that led to the award of the IFB.<sup>1</sup> You state you have released a portion of the requested information. Although you take no position with respect to the public availability of the remaining requested information, you state its release may implicate the proprietary interest of Quebecor World Dallas ("Quebecor"). You state you have notified Quebecor of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *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 received arguments from Quebecor. We have considered these arguments and reviewed the submitted information.

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<sup>1</sup>We note we previously addressed the availability of the majority of the requested information in Open Records Letter No. 2009-09079 (2009).

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested. Gov't Code § 552.301(e). The department states it received the present request for information on April 16, 2009. The department did not submit Quebecor's customer information until July 16, 2009. Consequently, the department failed to comply with section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released. *Id.* § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has held a compelling reason exists to withhold information when release of the information affects a third party's interests. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Here, Quebecor's interest in withholding the information is a compelling reason.

Quebecor seeks to withhold its customer information under section 552.110 of the Government Code. Section 552.110(b) protects “[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[.]” Gov't Code § 552.110(b). This exception to disclosure 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. *Id.* § 552.110(b); *see also* 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).

After reviewing the information at issue and Quebecor's arguments, we conclude Quebecor has demonstrated release of its customer information would result in substantial competitive harm to it for purposes of section 552.110(b). Thus, the department must withhold the submitted information. Because section 552.110(b) is dispositive, we do not address Quebecor's other arguments.

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](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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 355994

Enc. Submitted document

c: Requestor  
(w/o enclosures)

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