



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2010

Ms. YuShan Chang
Assistant City Attorney
City of Houston
P. O. Box 368
Houston, Texas 77001-0368

OR2010-00003

Dear Ms. Chang:

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# 366439.

The City of Houston (the "city") received a request for all reports and documents issued by The Segal Company ("Segal") to the city regarding its 1999-2000 wage survey. You state the final report has been released to the requestor. You claim that the submitted information is privileged under Texas Rule of Civil Procedure 192.5.^{1,2} You also state that a portion of the submitted information may be excepted from disclosure under section 552.110 of the Government Code, but you take no position as to whether the information is excepted under this section. Accordingly, you submit documentation showing that you provided a notice statement to Segal pursuant to the Act. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Civil Procedure 192.5, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

²We note that the city raises sections 552.103, 552.104, 552.113, 552.128, and 552.131 in its brief; however, it provides no explanation of how these exceptions are applicable to the submitted information. Accordingly, we do not address the city's assertion of these exceptions. *See* Gov't Code §§ 552.301, 302.

applicability of exception to disclosure under certain circumstances). We have considered your arguments and reviewed the submitted representative sample of information.³ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the city acknowledges, and we agree, that it failed to comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301. 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 that the information is public and must be released. Information 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 section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You assert the submitted information is privileged under Texas Rule of Civil Procedure 192.5. However, rule 192.5 protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under rule 192.5 is not compelling reason to withhold information under section 552.302), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the submitted information may not be withheld under Texas Rule of Civil Procedure 192.5. Because third party interests can provide a compelling reason to overcome the presumption of openness, we will consider whether or not the submitted information is excepted under the Act.

We note that 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) of the Government Code 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, we have not received any arguments from Segal. We, thus, have no basis for concluding that any portion of the submitted information constitutes proprietary 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

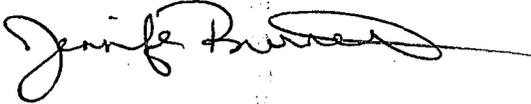
³We assume that the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any of the submitted information based on the proprietary interests of any interested third parties. As you raise no further exceptions against disclosure, the submitted 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 366439

Enc. Submitted documents

c: Requestor
(w/o enclosures)