



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 4, 2011

Ms. Jessica C. Eales  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2011-03143

Dear Ms. Eales:

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# 410485 (GC No. 17917).

The City of Houston (the "city") received a request for correspondence, bid documentation, audit reports, and e-mails related to certain city contracts during a specified period. You state the city sought and received clarification of the request.<sup>1</sup> You state that some of the information will be provided to the requestor. You claim a portion of the submitted information is excepted from disclosure under section 552.108 of the Government Code. You state the remaining submitted information might implicate the proprietary interests of certain third parties. Although you take no position with respect to the public availability of this information, you provided notice of the request to Bayou City Pumps ("Bayou City"), Pumps of Houston, Inc. ("Pumps of Houston"), Hahn Equipment, Inc. ("Hahn"), and CPC Maintenance, Inc. ("CPC") notifying them of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (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 statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments submitted by CPC. We have considered the exceptions claimed

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<sup>1</sup>*See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). *See also* *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

and reviewed the submitted information, a portion of which consists of a representative sample.<sup>2</sup>

The city asserts section 552.108(a)(2) for the information submitted as Exhibit 2. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 at 2–3 (1986). You state the information submitted as Exhibit 2 pertains to a criminal investigation conducted by the city's Office of the Inspector General ("OIG"), for which the Brazoria County District Attorney declined prosecution. You state the OIG was established by Executive Order of the Mayor in February 1988 as a central authority to investigate allegations of city employee misconduct, both criminal and administrative. Based on these representations and our review of the information, we agree that section 552.108(a)(2) is applicable to the information we have marked in Exhibit 2.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the city may withhold the information we have marked in Exhibit 2 pursuant to section 552.108(a)(2) of the Government Code.

The remaining information submitted in Exhibit 2 consists of e-mails sent between city employees after the conclusion of the investigation at issue. We find the city has not demonstrated the applicability of section 552.108 to this information, and it may not be withheld on that basis.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Bayou City, Pumps of Houston, or Hahn. Thus, neither Bayou City, Pumps of Houston, nor Hahn have demonstrated that they have a protected proprietary interest in any of the information submitted as Exhibit 3. *See id.* § 552.110(a)–(b); 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

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<sup>2</sup>We assume the "representative sample" of records 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 those records contain substantially different types of information than those submitted to this office.

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. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interests Bayou City, Pumps of Houston, or Hahn may have in the information.

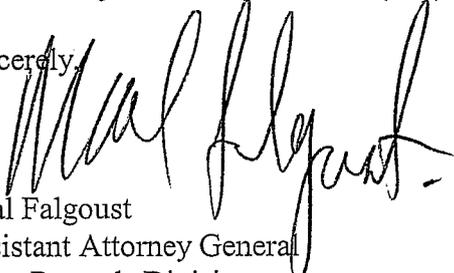
CPC asserts section 552.110(b) of the Government Code, which protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). Upon review, we find the pricing information we have marked in Exhibit 3 constitutes commercial or financial information, the release of which would cause the company substantial competitive harm. Accordingly, the city must withhold the information we have marked in Exhibit 3 under section 552.110(b) of the Government Code. As to the remaining information in Exhibit 3, we find CPC has not demonstrated how release of this information would cause it substantial competitive harm. Accordingly, the city may not withhold any of the remaining information in Exhibit 3 under section 552.110(b).

In summary, with the exception of basic information, the city may withhold the information we have marked in Exhibit 2 under section 552.108(a)(2) of the Government Code. The city must withhold the information we have marked in Exhibit 3 under section 552.110(b) of the Government Code. The remaining 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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/dls

Ref: ID# 410485

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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