



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2011

Ms. Angela M. DeLuca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2011-03953

Dear Ms. DeLuca:

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# 411968.

The City of Bryan (the "city") received a request for generic tax data for a specified location. You state the city does not have responsive information for 2007.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of this information may implicate the proprietary interests of MuniServices, LLC ("MuniServices"). Accordingly, you inform us, and provide documentation showing, that you notified MuniServices of the request and of its right to submit arguments to this office as to why its information should not be released. *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 applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 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 MuniServices explaining why the submitted information should not be released. Therefore, we have no basis to conclude MuniServices has protected proprietary interests in this 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). Consequently, the city may not withhold any of the submitted information on the basis of any proprietary interests MuniServices may have in the information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 321.3022 of the Tax Code, which provides in part:

(a-1) Except as otherwise provided by this section, the comptroller on request shall provide to a municipality or other local governmental entity that has adopted a tax under [chapter 321 of the Tax Code]:

(1) information relating to the amount of tax paid to the municipality or other local governmental entity under [chapter 321 of the Tax Code] during the preceding or current calendar year by each person doing business in the municipality or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$25,000; and

(2) any other information as provided by this section.

(f) Information received by a municipality or other local governmental entity under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting, for internal auditing of a tax paid to the municipality or other local governmental entity under [chapter 321 of the Tax Code], or for the purpose described in Subsection (g).

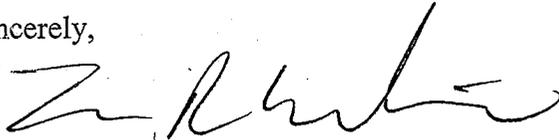
Tax Code § 321.3022(a-1), (f). You seek to withhold a sales tax analysis and reporting service report ("STARS report"). You state the city has adopted a tax under chapter 321 of the Tax Code. You further state that MuniServices prepared the STARS report for the city using tax information obtained from the comptroller pursuant to section 321.3022. Upon

review, we are unable to determine which information in the submitted STARS report was obtained from the comptroller. Accordingly, we must rule conditionally. Thus, to the extent the city obtained the submitted information from the comptroller, the city must withhold the information under section 552.101 of the Government Code in conjunction with section 321.3022(f) of the Tax Code. To the extent the submitted information was not obtained from the comptroller, it may not be withheld under section 552.101 in conjunction with section 321.3022(f) and 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/tf

Ref: ID# 411968

Enc. Submitted documents

c: Requestor
(w/o enclosures)