



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2011

Mr. Adolfo Ruiz
McKamie Krueger, L.L.P.
For City of Hondo
941 Proton Road
San Antonio, Texas 78258

OR2011-05666

Dear Mr. Ruiz:

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# 415377.

The City of Hondo (the "city"), which you represent, received a request for thirteen categories of information related to city's municipal airport.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.147 of the Government Code. You also state the submitted information may implicate the proprietary interests of U.S. Aviation Group ("Aviation"). Accordingly, pursuant to section 552.305 of the Government Code, you notified Aviation 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); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have received comments from Aviation. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have only submitted information pertaining to category ten of the request. To the extent information responsive to the remainder of the request existed on the date the city received the request, we assume you have released it. If you have not released

¹You note that the city requested a clarification of a portion of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad 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).

any such information, you must do so 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).

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]" *See* 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). Accordingly, the submitted tax return information, including Forms 1065, we have marked are confidential under section 6103(a) of Title 26 of the United States Code, and must be withheld under section 552.101 of the Government Code.² Upon review, we find none of the remaining information falls within the definition of "return information" under section 6103(b)(2). Accordingly, the city may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code.

Next, we consider Aviation's arguments under section 552.110(b) of the Government Code for the remaining information. 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); Open Records Decision No. 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).

²As our ruling is dispositive, we need not address your remaining argument against disclosure of the information in Exhibit B.

Upon review, we find Aviation has made only conclusory allegations that release of the remaining information would cause the company substantial competitive injury. Thus, Aviation has not demonstrated that substantial competitive injury would result from the release of any of its remaining information. *See* ORD 661. Accordingly, none of the remaining information may be withheld under section 552.110(b).

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 6103 of Title 26 of the United States 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 415377

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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