



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2011

Ms. Susana Carbajal Gonzalez
Assistant City Attorney
City of Austin
Department of Aviation
3600 Presidential Boulevard, Suite 411
Austin, Texas 78719

OR2011-18039

Dear Ms. Gonzalez:

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# 438296.

The City of Austin Department of Aviation (the "city") received a request for (1) the city's current advertising concession contract with Clear Channel Airports and (2) monthly concession revenue reports submitted in connection with the contract. You state the responsive contract has been released. Although you take no position on its public availability, you believe the submitted information may implicate the interests of Clear Channel Airports ("Clear Channel"). You inform us Clear Channel was notified of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released.¹ We have reviewed the information you submitted.

We note the city did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure no later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You state the city received the present request for information on September 15, 2011; therefore, the city's ten-business-day deadline under section 552.301(b) was September 29. You requested this decision and submitted the information at issue by United States mail meter-marked September 30. *See* Gov't Code § 552.308(a) (prescribing requirements for timeliness of request for ruling submitted by United States mail). Thus, the city did not comply with section 552.301 in requesting this decision, and the submitted information is therefore presumed to be public under section 552.302. *See* Gov't Code § 552.308 (prescribing requirements for proof of compliance with Gov't Code § 552.301). This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Accordingly, we will determine whether the city must withhold any of the submitted information to protect the interests of Clear Channel.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Clear Channel. Thus, because Clear Channel has not demonstrated any of the submitted information is proprietary for purposes of the Act, the city may not withhold any of the information at issue on the basis of any interest Clear Channel may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, as the city does not claim an exception to 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,

A handwritten signature in cursive script that reads "James W. Morris III". The signature is written in dark ink and includes a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 438296

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Legal Department
Clear Channel Airports
4635 Crackersport Road
Allentown, Pennsylvania 18104
(w/o enclosures)