



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 15, 2011

Mr. Peter Scott  
Assistant City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307-1431

OR2011-18450

Dear Mr. Scott:

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# 439147 (City ID# 328).

The City of Wichita Falls (the "city") received a request for a specified report. Although you take no position on whether the requested information is excepted from disclosure, you state release of this information may implicate the proprietary interests of DePalma Hotel Corporation ("DePalma"), DP Consulting ("DP"), and Ellea of Texas, LLC ("Ella"). Accordingly, you have notified DePalma, DP, and Ellea of the request and of their right to submit arguments to this office as to why the 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 received comments from Ellea. We have considered the submitted arguments and reviewed the submitted information.

We note that 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 decision, we have not received correspondence from DePalma or DP. Thus, DePalma and DP have not demonstrated that they have a protected proprietary interest in any of the submitted information. *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 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 interest DePalma or DP may have in the information.

Ellea claims the submitted information is excepted from disclosure under 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). 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.*; ORD 661 at 5-6.

Ellea asserts the submitted information constitutes commercial and financial information that, if released, would cause the company substantial competitive harm. Upon review, however, we find Ellea has made only general conclusory assertions that release of this information would cause it substantial competitive injury, and has provided no specific factual or evidentiary showing to support such assertions. *See generally* Open Records Decision Nos. 661, 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Consequently, the city may not withhold any portion of the submitted information under section 552.110(b) of the Government Code. As no further exceptions are raised, 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](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# 439147

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(Third party w/o enclosures)

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