



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2012

Ms. Elizabeth M. Ruhmann
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, Ninth Floor
El Paso, Texas 79901

OR2012-00829

Dear Ms. Ruhmann:

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# 442820.

The City of El Paso (the "city") received a request for the city's "current vendor's response to the city's RFP for EMS Billing and Collection", including "evaluation/score sheets by each individual selection committee member for each proposing vendor" and the "proposal, presentations, follow-up materials, etc., submitted by the County's current vendor."¹ Although you take no position as to whether the submitted information is excepted under the Act, you inform us release of this information may implicate the proprietary interests of Wittman Enterprises, LLC ("Wittman").² Accordingly, you notified Wittman of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have received comments from Wittman. We have considered the submitted arguments and reviewed the submitted information.

¹We note the city sought and received clarification of the request. *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 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).

²Although you raise sections 552.101, 552.104, and 552.110, you have not submitted arguments in support of these exceptions; therefore, we assume you have withdrawn these exceptions. *See* Gov't Code §§ 552.301, .302.

Initially, we note you have only submitted Wittman's "protected financial information." We note that Wittman does not object to the release of any of the remaining responsive information. To the extent any additional information responsive to the request existed on the date the city received the request, we assume you have released it. If you have not released 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).

Next, 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 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 October 24, 2011; therefore, the city's ten-business-day deadline under section 552.301(b) was November 7. You requested this decision and submitted the information at issue by United States mail meter-marked November 8. *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 address Wittman's argument for withholding this information.

Wittman raises section 552.110 of the Government Code for its "protected financial information." Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b).

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.*; *see also* ORD 661 at 5.

Wittman argues that the submitted information constitutes “protected financial information” that is protected under section 552.110(b) of the Government Code. Upon review, we find the submitted information pertaining to Wittman constitutes commercial or financial information, and that Wittman has established that the disclosure of this information would cause substantial competitive harm to Wittman. Accordingly, the city must withhold the submitted information under section 552.110(b) of the Government Code.

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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 442820

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)