



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2012

Mr. Philip Mack Furlow
For the City of Providence Village
Law Offices of Philip Mack Furlow, P.C.
1415 North Locust Street
Denton, Texas 76201-3039

OR2012-03272

Dear Mr. Furlow:

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# 447084.

The Town of Providence Village (the "town"), which you represent, received a request for the ordinance for the Telecom Tax, the town's boundary map, and a document that shows a specified rate or fee. You state the town has released the requested boundary map. You state you have no information pertaining to a Telecom Tax.¹ We understand you claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Further, you state release of some of the submitted information may implicate the proprietary interests of AT&T Texas ("AT&T"). Accordingly, you state, and provide documentation showing, you notified AT&T 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 the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request for information because they do not consist of documents

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

that show the specified rate or fee. This ruling does not address the public availability of any information that is not responsive to the request and the town is not required to release such information in response to this request.

Section 552.101 of the Government Code excepts from public 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. We understand you to claim section 552.101 in conjunction with section 283.005 of the Local Government Code, which provides:

(a) The [Public Utility Commission (the "commission")] may collect and compile any information from certificated telecommunications providers and municipalities as is necessary to implement this chapter.

(b) The commission shall maintain the confidentiality of the information described by Subsection (a) in accordance with Section 52.207, Utilities Code.

(c) Information provided to municipalities under this chapter shall be governed by confidentiality procedures established by the commission in compliance with Section 52.207, Utilities Code.

Local Gov't Code § 283.005. Section 52.207 provides, in relevant part:

(a) In conjunction with the commission's authority to collect and compile information, the commission may collect a report from a holder of a:

(1) certificate of operating authority; or

(2) service provider certificate of operating authority.

(b) The commission shall maintain the confidentiality of information contained in a report collected under this section that is claimed to be confidential for competitive purposes. The confidential information is exempt from disclosure under Chapter 552, Government Code.

Util. Code § 52.207(a)-(b). You generally claim the access line fee information is confidential pursuant to section 283.005 of the Local Government Code of the Utilities Code. However, you have provided no arguments explaining how this section applies to the responsive information. Further, we have received no arguments from AT&T regarding the applicability of this section to the information at issue. Upon review, therefore, we find the town has failed to demonstrate the applicability of section 283.005 to any portion of the information at issue. Accordingly, no portion of the responsive information may be withheld under section 552.101 of the Government Code on that basis.

We note 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) 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 AT&T explaining why the responsive information should not be released. Therefore, we have no basis to conclude AT&T has a protected proprietary interest in the responsive 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. Accordingly, the town may not withhold the responsive information on the basis of any proprietary interest AT&T may have in the information. As no further exceptions to disclosure have been raised, the responsive 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 447084

Enc. Submitted documents

c: Requestor
(w/o enclosures)