



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2012

Ms. Tiffany N. Evans
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-08064

Dear Ms. Evans:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 454872 (GC No. 19467).

The City of Houston (the “city”) received a request for information relating to any requests for proposals from February 23, 2011 to May 6, 2012 and any applications associated with the project located at the Thomas Care Center. The city takes no position as to disclosure of the information. Because release of the information may implicate the proprietary interests of the Cesar Chavez Foundation (the “foundation”), the city notified the foundation of the request and of its right to submit arguments to this office as to why its information should not be released. Gov’t Code § 552.305(d) (permitting third party with proprietary interest to submit to attorney general reasons why requested information should not be released).

First, the city acknowledged it failed to comply with section 552.301(b) of the Government Code, which requires a governmental body to ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *Id.* § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. *Id.* § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body

must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has held a compelling reason exists to withhold information when the information is confidential by another source of law or affects third party interests. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Here, a compelling reason exists because a third party's interest is implicated.

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, the foundation has not submitted arguments to this office explaining why its information should not be released. We thus have no basis to conclude release of the information will harm the foundation's proprietary interests. *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 (1990). Accordingly, the city may not withhold the information based on any proprietary interests the foundation may have. The city must release the information.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/bhf

Ref: ID# 454872

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Mr. Paul S. Park
Secretary
Cesar Chavez Foundation
316 West Second Street
Los Angeles, California 90012
(w/o enclosures)