



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2012

Mr. Jeff Tippens
Counsel for the Village of Volente
Scanlan, Buckle & Young, P.C.
602 West 11th Street
Austin, Texas 78701-2099

OR2012-19588

Dear Mr. Tippens:

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# 473386.

The Village of Volente (the "village"), which you represent, received a request for seven categories of information from specified time periods pertaining to video service providers: (1) "a total of the 1% fee revenue collected"; (2) "a list of each funding source"; (3) "a listing of individual, PEG-specific expenditures with [the] payee, purpose and date for each disbursement"; (4) "the name and account number for" a specified account; (5) "a list of all individual expenditures from [this] account with [the] payee, purpose and date for each disbursement"; (6) "a list of all deposits made into the account"; and (7) "the current balance of the" account. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You also inform us release of this information may implicate the proprietary interests of Time Warner Cable ("TWC"). Accordingly, you notified TWC of the request for information and of the company's 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 considered your arguments and reviewed the submitted representative sample of information.¹

Initially, you assert category one of the request for information “would require the [v]illage to compile or prepare new information.” You also inform us the village does not have information responsive to categories four through seven of the request. We note the Act does not require a governmental body to make available information that did not exist when the request was received, nor does it require a governmental body to compile information or prepare new information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Likewise, a governmental body is not required to produce the responsive information in the format requested or create new information to respond to the request for information. *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland 2000, pet. denied); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3, 342 at 3 (1982), 87 (1975). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). Therefore, while the village is not required to compile information or prepare new information in response to category one of the request, information from which responsive information may be derived would be responsive to category one. Thus, to the extent the village maintained records from which information responsive to category one might be derived on the date the request was received, the village must provide such information to the requestor. *See* Gov’t Code §§ 552.301(a), .302.

Next, you generally raise section 552.101 of the Government Code for the submitted information. This section excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. However, you have not directed our attention to any law, nor are we aware of any law, under which any of the submitted information is considered to be confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the village may not withhold any of this information under section 552.101 of the Government Code.

You also raises section 552.110 of the Government Code for the submitted information. However, we note this section is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address your argument under section 552.110. 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, TWC has

¹We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

submitted no comments to this office explaining how the release of the submitted information would affect the company's proprietary interests. *See id.* § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the village may not withhold any of this information on the basis of TWC's proprietary interests. As no further exceptions to disclosure are raised for the submitted information, the village must release it.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 473386

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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