



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2012

Ms. Michele Tapia
Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2012-20781

Dear Ms. Tapia:

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# 475498.

The City of Carrollton (the "city") received a request for the following information: (1) the total of the one percent fee revenue collected by the city with a list of each funding source from September 1, 2005 through August 31, 2011 and a listing of "individual PEG-specific expenditures with payee, purpose and date for each disbursement through August 31, 2011"; (2) the name and budget account number for the separate account established for the one percent fee revenue collected by the city; (3) a list of all individual expenditures from the account with payee, purpose, and date for each disbursement; (4) a list of all deposits made into the account; and (5) the current balance of the account as of March 31, 2012.¹ Although the city takes no position with respect to the submitted information, you state it may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the city notified Charter Communications ("Charter"), Time Warner Cable ("Time Warner"), and Verizon Wireless ("Verizon") of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). You inform our office, and submit supporting documentation demonstrating, Charter and Time Warner do not object to release of their

¹You state the city received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requester to clarify or narrow request, but may not inquire into purpose for which information will be used).

submitted information. We have reviewed the submitted information and the arguments submitted by Verizon.

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request for information because it was created after the present request for information was received.² This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release such information in response to this request.

Next, we note you have not submitted any information for the year 2005 for the portion of the request seeking the total of the one percent fee revenue collected by the city with a list of each funding source from September 1, 2005 through August 31, 2011. Thus, to the extent such information existed and was maintained by the city on the date the city received the request for information, we presume the city has released it. If not, the city must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Verizon seeks to withhold month-by-month receipt data. However, the city did not submit this type of information for our review. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the city. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Verizon submits arguments against disclosure of its information under section 552.110(b) of the Government Code. 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[.]” *Id.* § 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.* § 552.110(b); Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

Verizon contends its quarterly one percent revenue amounts paid to the city is commercial or financial information, release of which would cause substantial competitive harm to Verizon. Upon review, we find Verizon has not made the specific factual or evidentiary

²The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

showing required by section 552.110(b) that release of any of Verizon's information would cause the company substantial competitive harm. *See* Open Records Decision No. 319 at 3 (1982) (statutory predecessor to section 552.110 generally not applicable to information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing). We therefore conclude that the city may not withhold any of the responsive information under section 552.110(b) of the Government Code. Thus, we find the city must release the responsive 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 475498

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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