



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2013

Ms. Jessica D. Richard
Assistant City Attorney
City of New Braunfels
424 South Castell
New Braunfels, Texas 78130

OR2013-04390

Dear Ms. Richard:

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# 481447 (ORR # 2012-518 and 2012-516).

The City of New Braunfels (the "city") received the two following requests for information: (1) one request received on December 26, 2012 for specified sections of all bid proposals submitted for RFP 13-001 and (2) one request from a different requestor received on December 27, 2012 for all bid proposals submitted for RFP 13-001. You state the submitted information is excepted from disclosure under section 552.103 of the Government Code. In addition, you state release of some of the submitted information may implicate the proprietary interests of Bluebonnet Motors ("Bluebonnet"); Comal Towing; City Wide Towing L.L.C.; Fat Boy Towing d/b/a FBT Storage, L.L.C.; Flugrath Towing; Hernandez Towing ("Hernandez"); Hill Country Customs d/b/a Hill Country Customs Towing ("Hill Country"); Incident Management of Texas LLC d/b/a Tow King of Waco; New Braunfels Towing ("NBT"); and New Braunfels Wrecker Service ("NBWS"). Accordingly, you state you notified these third parties of the request and of their right to submit arguments to this office as to why their information should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from representatives of Hernandez, Hill Country, NBT, and NBWS. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from one of the requestors. *See* Gov't

Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the first request seeks only specified portions of the submitted bid proposals. Thus, any information other than the specified sections of the bid proposals are not responsive to the first request. Additionally, we note you have submitted information that does not consist of any portion of bid proposal submitted for RFP 13-001. As such, this information is not responsive to either request. This ruling does not address the public availability of the non-responsive information with respect to either request.

Next, we note the responsive submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-03983 (2013). A representative for Hernandez submitted the previous request for information, so the company did not submit comments to this office in response to that request.¹ In that ruling, we concluded the city must, in part, (1) withhold the information we marked under section 552.110(a) of the Government Code; (2) withhold the information we marked under section 552.1175 of the Government Code if the individual to whom the information pertains is still a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code; (3) withhold the information we marked under sections 552.130 and 552.136 of the Government Code; and (4) release the remaining information. The city now seeks to withhold the remaining information that was ordered released under section 552.103 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the city may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential by law. Although you seek to withhold the information that was previously released under section 552.103 of the Government Code, we note that this exception does not make information confidential under law or expressly prohibit its release for purposes of section 552.007. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at n.5 (2000) (discretionary exceptions generally). Thus, the city may not now withhold any previously released information under this exception. Further, as we have no indication the law, facts, and circumstances on which Open Records Letter No. 2013-03983 was based have changed, as to the information other than Hernandez's, the

¹We note Open Records Letter No. 2013 - 03983 also responded to two other requests from a different requestor. Hernandez's information was not responsive to the second requestor's requests.

city must continue to rely on Open Records Letter No. 2013-03983 as a previous determination and withhold or release that information in accordance with this ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, in this instance, Hernandez has now submitted arguments to our office in response to the current requests. Hernandez claims portions of its proposal are excepted under section 552.110 of the Government Code, which makes information confidential under the Act. Therefore, because circumstances have changed with respect to Hernandez's information, the city may not rely upon the prior ruling as a previous determination for Hernandez's information, and we will address Hernandez's arguments against release of its information.

We understand Hernandez to assert a portion of its information is protected by 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[.]" 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. *See* Open Records Decision No. 661 at 5-6 (1999) (business must show by specific factual evidence that release of particular information at issue would cause substantial competitive injury). Upon review, we find Hernandez has failed to establish that release of any of its information would cause the company substantial competitive injury. *See id.* Therefore, the city may not withhold any of Hernandez's information under section 552.110(b).

We note some of the remaining responsive information may be subject to section 552.1175 of the Government Code.² Section 552.1175 applies, in part, to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

Gov't Code § 552.1175(a)(1). If the information at issue concerns an individual listed in section 552.1175(a), then section 552.1175(b) provides:

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Id. § 552.1175(a), (b). Upon review, we determine the city must withhold the information we have marked under section 552.1175 if the individual to whom the information pertains is still a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b). If the individual is no longer a licensed peace officer or no election is made, the city may not withhold the individual's information under section 552.1175.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1). Upon review, we find that portions of the remaining information consist of driver's license information. Accordingly, the city must withhold the driver's license information we have marked under section 552.130 of the Government Code.

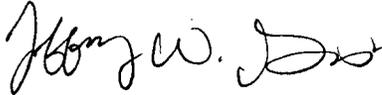
In summary, except for Hernandez's proposal, the city must continue to rely on Open Records Letter No. 2013-03983 as a previous determination and withhold or release the information we have previously ruled on in accordance with this prior ruling. With regards to Hernandez's proposal, the city must withhold the information we have marked under section 552.1175 of the Government Code if the individual to whom the information pertains is still a licensed peace officer and he elects to restrict access to his information in accordance with section 552.1175(b) of the Government Code. The city must withhold the information we have marked under section 552.130 of the Government Code. The city must release the remaining 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 481447

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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(w/o enclosures)

Mr. Flugrath
Flugrath Towing
1689 North Interstate 35
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Mr. George Grenwelge
President
Fat Boy Towing d/b/a FBT Storage, LLC
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Hernandez Towing
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