



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2014

Mr. Jeffrey W. Giles
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2014-00632

Dear Mr. Giles:

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# 511616 (City GC No. 20937).

The City of Houston (the "city") received a request for the advertising concession monthly revenue report, net receipts, and gross receipts received by both the William P. Hobby Airport and the George Bush Intercontinental Airport from its current advertising concessionair, JCDecaux North America ("JCDecaux"), since 2013. You state, although the city takes no position with respect to the requested information, its release may implicate the interests of JCDecaux. Accordingly, you state, and provide documentation demonstrating, the city notified JCDecaux of the request for information and of its right to submit arguments stating why its 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). We have reviewed the submitted information and the arguments submitted by JCDecaux.

JCDecaux raises section 552.110(b) of the Government Code, which 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. *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).

JCDecaux contends portions of the submitted information are commercial or financial information, the release of which would cause the company substantial competitive harm. Upon review of JCDecaux's arguments, we conclude JCDecaux has established the release of some of its client information, which we have marked, would cause it substantial competitive injury. Accordingly, the city must withhold the information we have marked under section 552.110(b). However, we note JCDecaux published the identities of the remaining clients at issue on its website, thereby making this information publicly available. Therefore, JCDecaux has not shown the release of this information would cause it competitive injury. We also find JCDecaux has made only conclusory allegations that release of the remaining information at issue would cause it substantial competitive injury and has provided no specific factual or evidentiary showing to support such allegations. *See id.* § 552.110(b). Therefore, we conclude the city may not withhold the remaining information under section 552.110(b).

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

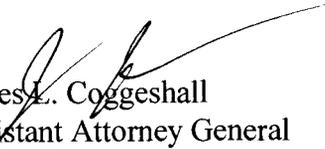
To conclude, the city must withhold the information we have marked under section 552.110(b) of the Government Code. The city must release the remaining information, but may only release any copyrighted information in accordance with copyright law.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 511616

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Martha D. Bailey
General Counsel
Executive Vice President, Legal Affairs
JCDecaux North America
3 Park Avenue, 33rd Floor
New York, New York 10016
(w/o enclosures)