



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 29, 2014

Mr. John B. Dahill  
General Counsel  
Texas Conference of Urban Counties  
500 West 13<sup>th</sup> Street  
Austin, Texas 78701

OR2014-09209

Dear Mr. Dahill:

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# 522680.

The Texas Conference of Urban Counties (the "conference") received a request for the responses to a specified request for proposal issued for "Scanning-Extraction-Redaction" software. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified Extract Systems, Inc. ("Extract") of the request for information and of its 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 the Act in certain circumstances). We have received comments from Extract. We have considered the submitted arguments and reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>Extract questions whether the conference is a governmental body as defined in the Act, and requests that, if our office determines the conference is not a governmental body subject to the Act, the request for information should be denied and Extract's information not be released to the requestor. We note the conference does not assert it is not subject to the Act. Accordingly, we address the submitted arguments against disclosure of the information at issue.

Extract claims a portion of its information is protected from disclosure because it is marked “confidential.” We note, however, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. See Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110 Government Code). Consequently, unless the information at issue comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Extract asserts portions of its information are excepted from disclosure under section 552.110 of the Government Code. Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence 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, substantial competitive injury would likely result from release of the information at issue. *Id.*; see also Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

Extract claims its model pricing and audited financial information consists of commercial information, the release of which would cause the company substantial competitive harm under section 552.110(b) of the Government Code. Upon review of Extract’s arguments, we find Extract has demonstrated its model pricing and audited financial information, which we have marked, constitutes commercial or financial information, the release of which would cause the company substantial competitive injury. Accordingly, the conference must withhold this information, which we have marked, under section 552.110(b).<sup>2</sup> The remaining information must be released.

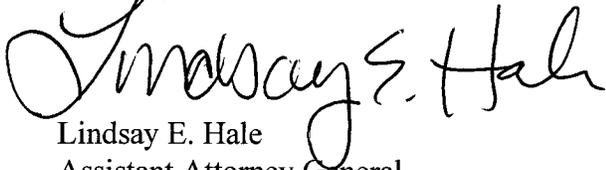
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>As our ruling is dispositive, we need not address Extract’s remaining argument under section 552.110(a) of the Government Code.

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](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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/akg

Ref: ID# 522680

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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