



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2014

Mr. Gary Henrichson
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2014-12874

Dear Mr. Henrichson:

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# 530535 (Request No. W015105-050214).

The City of McAllen (the "city") received a request for Clear Channel Interspace's ("Clear Channel") response to the city's airport advertising bid. Although you do not take any position as to whether the submitted information is excepted from disclosure under the Act, you state, and provide documentation showing, you notified Clear Channel 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 (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 received comments from Clear Channel. We have considered the submitted arguments and reviewed the submitted information.

We note Clear Channel objects to disclosure of information the city has not submitted to this office for review. This ruling does not address information that was not submitted by the city and is limited to the information the city has submitted for our review. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Clear Channel argues portions of its information are excepted 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 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, 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).

Clear Channel claims portions of the submitted information constitute commercial or financial information excepted under section 552.110(b) of the Government Code. Clear Channel states the release of the information it seeks to withhold under section 552.110(b) would cause substantial competitive harm. Upon review, we conclude Clear Channel has established the release of its client information would cause it substantial competitive injury. Accordingly, to the extent the client information is not publicly available on Clear Channel’s website, the city must withhold the client information at issue under section 552.110(b). However, we find Clear Channel has not provided specific factual evidence that substantial competitive injury would likely result from the release of the remaining information at issue. Further, we note the pricing information of a winning bidder is generally not excepted under section 552.110(b). *See* Open Records Decision No. 514 (1988) (public has interest in knowing prices charged by government contractors). *See generally* Dep’t of Justice Guide to the Freedom of Information Act, 344-345 (2009) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). Additionally, the terms of a contract with a governmental body are generally not excepted from public disclosure. *See* Gov’t Code § 552.022(a)(3) (contract involving receipt or expenditure of public funds expressly made public). Thus, we find the city may not withhold any of the remaining information pursuant to section 552.110(b) of the Government Code.

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.

In summary, to the extent Clear Channel’s client information is not publicly available on Clear Channel’s website, the city must withhold this client information under section 552.110(b) of the Government Code. The remaining information must be released;

however, any information that is subject to copyright may be released only 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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID# 530535

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ade B. Galloway
Airport Operations Counsel
Clear Channel Airports
4635 Crackersport Road
Allentown, Pennsylvania 18104
(w/o enclosures)