



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 24, 2016

Mr. Robert Davis
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2016-04449

Dear Mr. Davis:

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# 599651.

The City of Austin (the “city”) received a request for the current contract for the management and operation of the advertising concession at the Austin-Bergstrom International Airport. Although the city takes no position as to whether the submitted information is excepted under the Act, it states release of the submitted information may implicate the proprietary interests of In-Ter-Space Services, Inc. d/b/a Clear Channel Airports (“Clear Channel”).¹ Accordingly, the city states, and provides documentation showing, it 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(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 Clear Channel. We have considered the submitted arguments and reviewed the submitted information.

Clear Channel claims some of its information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects “[c]ommercial or

¹The city acknowledges, and we agree, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov’t Code § 552.301(b), (e). Nonetheless, because third-party interests are at stake, we will consider whether the submitted information must be withheld under the Act based on third-party interests. *See id.* §§ 552.007, .302, .352.

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).

Clear Channel argues some of the submitted 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. However, we note 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); Open Records Decision No. 541 at 8 (public has interest in knowing terms of contract with state agency). Upon review, we find Clear Channel has not established any of the information at issue constitutes commercial or financial information, the disclosure of which would cause the company substantial competitive harm. Accordingly, none of the information Clear Channel seeks to withhold may be withheld under section 552.110(b) of the Government Code. As no other exceptions to disclosure are raised, the city must release the submitted 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.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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 599651

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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