



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 19, 2015

Ms. Andrea D. Russell
Counsel for the City of Euless
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2015-17169

Dear Ms. Russell:

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# 576053.

The City of Euless (the "city"), which you represent, received a request for (1) documents indicating the location of any property owned by the city in a specified location, and (2) documents reflecting the revenue received by the city from the Dallas-Fort Worth Airport rental car facility during a specified time period. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, the city states release of some of the submitted information may implicate the proprietary interests of EAN Holdings, L.L.C. ("EAN"). Accordingly, the city states, and provides documentation showing, it notified EAN 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 considered the exception the city claims and reviewed the submitted representative sample of information.¹

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov't Code*

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

§ 552.305(d)(2)(B). As of the date of this letter, we have not received comments from EAN explaining why the submitted information should not be released. Therefore, we have no basis to conclude EAN has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (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), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest EAN may have in the information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 321.3022 of the Tax Code, which provides, in part:

(a-1) Except as otherwise provided by this section, the [Texas Comptroller of Public Accounts (the “comptroller”)] on request shall provide to a municipality or other local governmental entity that has adopted a tax under [chapter 321 of the Tax Code]:

(1) information relating to the amount of tax paid to the municipality or other local governmental entity under [chapter 321 of the Tax Code] during the preceding or current calendar year by each person doing business in the municipality or other local governmental entity who annually remits to the comptroller state and local sales tax payments of more than \$5,000; and

(2) any other information as provided by this section.

...

(f) Information received by a municipality or other local governmental entity under this section is confidential, is not open to public inspection, and may be used only for the purpose of economic forecasting, for internal auditing of a tax paid to the municipality or other local governmental entity under [chapter 321 of the Tax Code], or for the purpose described in Subsection (g).

(g) Information received by a municipality or other local governmental entity under Subsection (b) may be used by the municipality or other local governmental entity to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

Tax Code § 321.3022(a-1), (f)-(g). The city states it received the sales tax information in Exhibit B-1 from the comptroller pursuant to section 321.3022(a-1). We have no indication the information at issue is being sought for economic forecasting, to conduct an internal

audit, or on behalf of the city to determine revenue sharing under a revenue sharing agreement. Based on the submitted representations and our review, we find Exhibit B-1 is confidential under section 321.3022(f) of the Tax Code, and the city must withhold it under section 552.101 of the Government Code. However, the city has failed to demonstrate it received the remaining information at issue from the comptroller pursuant to section 321.3022(a-1). Consequently, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 321.3022(f) of the Tax Code. As the city raises no other exceptions to disclosure, the city must release the remaining 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 576053

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jerret Reagh
Accounting Supervisor
EAN Holdings, LLC
3820 South 26th Street
DFW Airport, Texas 75261
(w/o enclosures)