



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 19, 2016

Ms. Julie P. Doshier  
Counsel for the City of Duncanville  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard Street  
Dallas, Texas 75201

OR2016-23471

Dear Ms. Doshier:

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# 631044 (City File Reference# 78318).

The City of Duncanville (the "city"), which you represent, received a request for records of sales tax payments by four named businesses during a specified time period. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of this information may implicate the interests of Apple Texas Restaurant, Olive Garden, Pappas Restaurant, Inc., and Red Lobster Seafood Company ("Red Lobster"). Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights 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 Red Lobster. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have marked a portion of the submitted information as not responsive to the instant request for information because it does not relate to any of the named businesses. This ruling does not address the public availability of non-responsive information, and the city need not release non-responsive information to the requestor.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any remaining third party. Thus, we have no basis to conclude any remaining third party has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest any remaining third party may have in the information.

Section 552.101 of the Government Code excepts 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).

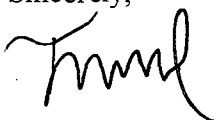
(g) Information received by a municipality or other local governmental entity under Subsection (b) may be used by the municipality or other local governmental entity to assist in determining revenue sharing under a revenue sharing agreement or other similar agreement.

Tax Code § 321.3022(a-1), (f)-(g). You state the city received the responsive sales tax information you have marked 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 your representations and our review, we find the information you have marked 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.<sup>1</sup> As no further exceptions to disclosure are raised, 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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 631044

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Parties  
(w/o enclosures)

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<sup>1</sup>As our ruling on this information is dispositive, we need not address the remaining arguments against its disclosure.