



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 5, 2017

Ms. Jessica Vu
Public Information Coordinator
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2017-00375

Dear Ms. Vu:

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# 640657.

The Office of the Governor (the "governor's office") received a request for information related to the program verification worksheet, qualifying application, grant agreement, and CPA Audit Opinion under the Texas Moving Image Industry Incentive Program for a specified production. Although you take no position as to whether the submitted information is excepted under the Act, you state the release of the submitted information may implicate the proprietary interests of Reel FX, Inc. ("Reel FX"). Accordingly, you state you notified Reel FX 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 reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note the governor's office has only submitted information pertaining to the program verification worksheet, qualifying application, and grant agreement. Thus, to the

extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-22244 (2015). In Open Records Letter No. 2015-22244, we determined the governor's office must release the submitted information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, we conclude the governor's office must rely on Open Records Letter No. 2015-22244 as a previous determination and release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination).

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 § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Reel FX explaining why the remaining information should not be released. Therefore, we have no basis to conclude Reel FX has a protected proprietary interest in the remaining 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 governor's office may not withhold the remaining information on the basis of any proprietary interest Reel FX may have in the information.

In summary, the governor's office must rely on Open Records Letter No. 2015-22244 as a previous determination and release the identical information in accordance with that ruling. As no exceptions have been raised, the governor's office 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,

A handwritten signature in black ink, appearing to read "Kavid Singh". The signature is written in a cursive, somewhat stylized font.

Kavid Singh
Assistant Attorney General
Open Records Division

KVS/som

Ref: ID# 640657

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)