



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2017

Mr. Zachary Brown
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR2017-15280

Dear Mr. Brown:

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# 666205 (PIR# 33998).

The City of Austin (the "city") received a request for information pertaining to a specified city contract and additional documentation relating to the city contract. Although you take no position with respect to the public availability of the submitted information, you indicate release of the submitted information may implicate the proprietary interests of a third party. Accordingly, you notified Sky Chefs, Inc. ("Sky") of the request and of its right to submit arguments to this office explaining why the information at issue 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); *see also* 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 Sky. We reviewed the submitted representative sample of information and considered the submitted arguments.¹

Sky asserts portions of its information are excepted from disclosure 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 that 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, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1991) (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).

Sky argues portions of its information consist of commercial or financial information the release of which would cause the company substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Sky has demonstrated a portion of the information at issue constitutes financial information, the release of which would cause substantial competitive injury. Accordingly, the city must withhold this information, which we marked, under section 552.110(b) of the Government Code. However, we find Sky has failed to demonstrate the release of any of its remaining information would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Therefore, the city may not withhold any of the remaining information under section 552.110(b) of the Government Code.

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.

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 that those records contain substantially different types of information than that submitted to this office.

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 "D. Michelle Case". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

D. Michelle Case
Attorney
Open Records Division

DMC/sdk

Ref: ID# 666205

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)