



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 10, 2017

Mr. Neal Falgoust
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2017-23060

Dear Mr. Falgoust:

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# 679311 (PIR# 35572).

The City of Austin (the "city") received a request for pricing and square footage information pertaining to certain companies during a specified time period and information relating to enplanements at the city's airport. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of 24-Hour Flowers, Inc.; AIClear, LLC; Auntie Anne's/Lone Star Dreams; Bank of America; Brazos Concessions Co./Salt Lick Joint Venture/DNC; FaraCafe; Knot AnyMore, LLC; Love Shines, Inc.; Mailsafe Express, Inc.; News & Gift Shops International Austin; O'Neill's Catering/N.J. Reagan Enterprises, Inc.; Ready Credit Corp.; Sky Chefs, Inc.; Smart Carte, Inc.; Travelex Currency Services, Inc.; United Heritage Credit Union; Wok & Roll; and Zoom Systems/New Zoom, Inc.¹ Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 submitted information.

¹We note the city did not comply with the requirements of section 552.301(e) of the Government Code in providing some of the information at issue. *See* Gov't Code § 552.301(e). Nonetheless, because third-party interests can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

Initially, we note the city has only submitted pricing information. To the extent information responsive to the remainder of the request existed on the date the city received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

We note 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) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the notified third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude those parties have protected proprietary interests 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, 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 any portion of the submitted information related to the notified third parties on the basis of any proprietary interest they may have in the information. As you raise no exceptions to disclosure, 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/sb

Ref: ID# 679311

Enc. Submitted documents

c: Requestor
(w/o enclosures)

18 Third Parties
(w/o enclosures)