



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 14, 2017

Ms. Karen Kennard
Counsel for Austin Convention and Visitors Bureau
d/b/a Visit Austin
Greenberg Traurig, L.L.P.
300 West 6th Street, Suite 2050
Austin, Texas 78701

OR2017-26006

Dear Ms. Kennard:

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# 682065.

The Austin Convention and Visitors Bureau d/b/a Visit Austin (the "bureau"), which you represent, received a request for information pertaining to services rendered in exchange for payments made to a named entity. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Further, you state release of this information may implicate the proprietary interests of Belmont Icehouse. Accordingly, you state, and provide documentation showing, you notified Belmont Icehouse of the request for information and of its 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 arguments and reviewed the submitted representative sample of information.¹ We have also received

¹We assume that 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.

and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we address the requestor's contention that the requested information is subject to section 351.101(d) of the Tax Code. Section 351.101(d) of the Tax Code states:

[a] person with whom a municipality contracts under this section to conduct an activity authorized by this section shall maintain complete and accurate financial records of each expenditure of hotel occupancy tax revenue made by the person and, on request of the governing body of the municipality or other person, shall make the records available for inspection and review to the governing body or other person.

Tax Code § 351.101(d). Pursuant to section 552.303 of the Government Code, we asked the bureau whether any of the submitted information was subject to section 351.101(d) of the Tax Code.² In response, the bureau informs us the submitted information does not contain any financial records subject to section 351.101(d) and states the bureau has previously released its financial records and documents that support the financial records, to the requestor. Based upon this representation, we conclude the submitted information is not subject to section 351.101(d) of the Tax Code; therefore, we will address the bureau's arguments against its disclosure.

Next, 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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Belmont Icehouse explaining why the submitted information should not be released. Therefore, we have no basis to conclude Belmont Icehouse 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, 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 bureau may not withhold the submitted information on the basis of any proprietary interest Belmont Icehouse may have in the information.

²*See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).

The bureau contends the submitted information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets obtained from a person and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider the bureau's argument under section 552.110.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The bureau asserts it has specific marketplace interests in the information at issue because it competes with other convention and visitors bureaus across the country to attract conventions and tourism to the City of Austin. The bureau asserts release of the information at issue would give advantage to competitors of the bureau. After review of the information at issue and consideration of the arguments, we find the bureau has established the release of the information it indicated would give advantage to a competitor or bidder. Thus, we conclude the bureau may withhold the information you have indicated under section 552.104(a) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).³ *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the bureau must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

In summary, the bureau may withhold the information you have indicated under section 552.104(a) of the Government Code. The bureau must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

affirmatively consent to their public disclosure or subsection (c) applies. The bureau 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/sb

Ref: ID# 682065

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)