



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 14, 2019

Mr. Jesse M. Blakely, Jr.
Brazoria County District Attorney's Office
County Courthouse
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2019-01089

Dear Mr. Blakely:

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# 745998 (Reference No. 18-1514).

The Texas Gulf Coast Regional Airport (the "airport") received a request for information pertaining to a specified agreement.¹ You state the airport has released most of the requested information. You also state release of the submitted information may implicate the proprietary interests of EPIC Aviation, L.L.C. ("EPIC"). Accordingly, you state, and provide documentation showing, you notified the interested third party 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 reviewed the submitted information.

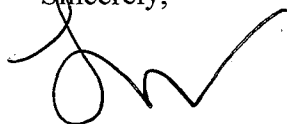
¹We note the airport failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302; Open Records Decision No. 150 at 2 (1977). Thus, we will consider whether the information at issue is excepted from disclosure under the Act, notwithstanding the airport's violations of section 552.301 with respect to the submitted information. Further, you raise section 552.110 of the Government Code; however, we note that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See* Gov't Code § 552.110 (excepting from disclosure "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and "[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"). Thus, we do not address the airport's assertion of section 552.110, but we will consider a third party's assertion of that exception.

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 EPIC explaining why the submitted information should not be released. Therefore, we have no basis to conclude EPIC 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 airport may not withhold any portion of the submitted information on the basis of any proprietary interest EPIC may have in the information. Therefore, the airport 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,



Jahna Ward
Assistant Attorney General
Open Records Division

JW/gw

Ref: ID# 745998

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)