



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2019

Mr. Robert K. Nordhous
Assistant City Attorney
City of San Antonio
506 Dolorosa Street, Building 1
San Antonio, Texas 78204

OR2019-12483

Dear Mr. Nordhous:

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# 764478 (COSA File No. W252602-021919).

The City of San Antonio (the "city") received a request for information pertaining to three specified businesses within a specified geographical region. You state you do not have information responsive to part of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.136 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Embassy Suites & Spa Brooks City Base; Hex IH37 Southeast Military SATX, LLC; and HPTN Brooks Citybase SATBC Operating Company, LLC. Accordingly, you state, and provide documentation showing, you notified these interested third parties of the request for information and of their 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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from any interested third party. Thus, we have no basis to conclude any of the third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 of the submitted information on the basis of any proprietary interest any third party may have in the information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 111.006 of the Tax Code. Section 111.006 of the Tax Code provides as follows:

(a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b) of this section:

- (1) a federal tax return or federal tax return information required to have been submitted to [the Texas Comptroller of Public Accounts (the "comptroller's office")] with a state tax return or report; and
- (2) all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.

²We 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.

Tax Code § 111.006(a)(1), (a)(2). Section 111.006 applies to the comptroller's office and makes confidential information submitted to the comptroller's office or information that the comptroller's office obtained during the course of an examination conducted under chapter 111. *Cf.* Open Records Decision No. 520 (1989) (section 151.027 of the Tax Code, which has language similar to section 111.006, applies only to records and information in the custody of the comptroller's office and not to information in another governmental body's possession). Thus, this section is not applicable to information held by the city, and thus, the city may not withhold the submitted information on this basis.

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, 841 (Tex. 2015). Although the city raises section 552.104, and argues release of the information would harm the third parties by giving an advantage to the third parties' competitors, such an interest in protecting the information belongs to the third parties and not the city. Thus, after review of the information at issue and consideration of your arguments, we find you failed to establish the release of submitted the information would give advantage to a competitor or bidder. Therefore, we conclude the city may not withhold any of the submitted information under section 552.104(a) of the Government Code.

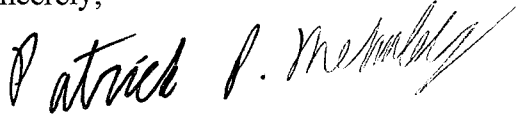
Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon review, we find you failed to demonstrate the information at issue consists of access device numbers for purposes of section 552.136. Accordingly, the city may not withhold the information it marked under section 552.136 of the Government Code. As no exceptions remain, 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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/eb

Ref: ID# 764478

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)