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ATTORNEY GENERAL OF TEXAS

December 18, 2019

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport Board
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR2019-35855

Dear Ms. Constantine:

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# 802497.

The Dallas/Fort Worth International Airport Board (the "board") received a request for certain contracts with Morgan Stanley & Co. LLC ("Morgan Stanley") during a stated time period, including information regarding the results of the contracts. The board states some of the requested information does not exist.¹ The board claims the submitted information is excepted from disclosure under section 552.105 of the Government Code. Additionally, the board states release of the submitted information may implicate the proprietary interests of Morgan Stanley. Accordingly, the board states, and provides documentation showing, it notified Morgan Stanley of the request for information and of its right to submit arguments to this office. *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 exception the board claims and reviewed the submitted information.

Initially, we must address the board's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must

¹ The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, the board indicates it received the request for information on August 27, 2019. We note September 2, 2019, was a holiday. We also note this office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the board's ten-business-day deadline under section 552.301(b) was September 11, 2019, and the board's fifteen-business-day deadline under section 552.301(e) was September 18, 2019. However, the envelope in which the board provided the information required by section 552.301(b) and section 552.301(e) was postmarked October 9, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the board failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The board claims section 552.105 of the Government Code for the submitted information. However, we find the board failed to establish a compelling reason to address its argument under this section. Nonetheless, third party interests can provide a compelling reason to withhold information from disclosure.

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 Morgan Stanley explaining why the information at issue should not be released. Thus, we have no basis to conclude Morgan Stanley 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, 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. Therefore, the board may not withhold the submitted information on the

basis of any proprietary interest Morgan Stanley may have in the information. Accordingly, the board 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/be

Ref: ID# 802497

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)