



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 29, 2020

Ms. Kristen L. Hamilton-Karam  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2020-12188

Dear Ms. Hamilton-Karam:

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# 824844 (Ref. No. 20-1003-1065).

The City of El Paso (the "city") received a request for the monthly revenue reports pertaining to the current El Paso International Airport concessionaire during a stated period of time. You claim the submitted information is excepted from disclosure under sections 552.104, 552.110, and 552.1101 of the Government Code. Additionally, you state release of the information at issue may implicate the proprietary interests of Clear Channel Outdoor, LLC d/b/a Clear Channel Airports ("CCA"). Accordingly, you state, and provide documentation demonstrating, the city notified CCA of the request for information and of its 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 exception in the Act in certain circumstances). We have received comments from CCA. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you raise sections 552.110 and 552.1101 of the Government Code. Section 552.110 of the Government Code protects (1) trade secrets, 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(b)-(c). Although you assert the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. In addition, although you raise section 552.1101 of the Government Code, this section protects only the interests of a vendor, contractor, potential vendor, or

potential contractor that has provided information to a governmental body, not those of the governmental body itself. *See id.* § 552.1101(c). Thus, we do not address your arguments under sections 552.110 or 552.1101 of the Government Code.

Section 552.104(a) of the Government Code excepts from disclosure information that a governmental body demonstrates, if released, would “harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation where the governmental body establishes the situation at issue is set to reoccur or there is a specific and demonstrable intent to enter into the competitive situation again in the future.” *Id.* § 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). After review of the information at issue and consideration of the arguments, we find you have failed to demonstrate the applicability of section 552.104 to the information at issue. Thus, we conclude the city may not withhold the information at issue under section 552.104(a).

Section 552.110(c) of the Government Code excepts from disclosure “commercial 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[.]” Gov’t Code § 552.110(c). CCA argues some of its information consists of commercial or financial information subject to section 552.110(c).<sup>1</sup> Upon review, we find CCA has demonstrated portions of the information at issue, which includes client reference information, constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the information we marked under section 552.110(c) of the Government Code; however, to the extent CCA’s client information is publicly available on its website, the city may not withhold it under section 552.110(c). In addition, we find CCA has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the city may not withhold any portion of the remaining information at issue under section 552.110(c) of the Government Code. The city 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 <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

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<sup>1</sup> Although CCA cites to section 552.110(b) of the Government Code in its brief, we understand CCA to raise section 552.110(c) of the Government Code based on the substance of its arguments.

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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/eb

Ref: ID# 824844

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)