



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 23, 2020

Ms. Maria Angela Flores Beck
City Attorney
City of La Grange
155 East Colorado
La Grange, Texas 78945

OR2020-18444

Dear Ms. Flores Beck:

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# 836927.

The City of La Grange (the "city") received a request for names of companies that applied and were granted or denied assistance in two city programs. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of 2119 Dad's Recipe, LLC ("2119 Dad"); Art Connections Gallery; The Back Porch BBQ and Grill; BCL of Texas, d/b/a CEN-TEX CDC ("CEN-TEX"); Big State Coffee House & Roastery ("Big State"); Bistro 108; Bling a Gogo, LLC; Bodega Wine Market; Carter Hotel; Celebration Events & Catering; D&G Business Machines ("D&G"); DIY Studio; Dress for Success Uniforms; Guadalajara Mexican Restaurant; Graphtex, Inc.; Hair by Brenna Beseda; Hank's Express; Hill Solutions, Inc. ("Hill"); Jador, Inc.; Jay Dee's Sports Grill; Julie B; La Grange Cotton Gin, LLC; La Grange Economic Development Corporation (the "EDC"); La Marina Restaurant; Las Fuentes Mexican Restaurant and Bar; Latte on the Square; Le Petite Gourmet Shoppe ("Le Petite"); Leo's Barber Shop; Leopard Donuts; Maxwell Motors; Prause Meat Market, LLC; Prickly Pear, LLC; The Quilted Skein ("Quilted Skein"); Reba's Village Deli and Pizza; Réve Hair Salon ("Réve"); Riverside Café; Salon Envy; Sealand Taqueria Sergios; Sno Dogz; Studio 76; Swede and Lewis Texas Art Bar; Texas Blue's 66; Texas One Stop of La Grange; Texas Reliable RVs; Weikel's Enterprises; Wild Dragonfly Boutique; The Yogic Flow Institute for Mindful Living; YM Apparel & Design; and named individuals. Accordingly, you state, and provide documentation showing, you notified these interested third parties 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 §§ 552.304 (interested party may submit comments stating why information

should or should not be released), .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 2119 Dad, Big State, D&G, Hill, Julie B, Le Petite, Quilted Skein, Réve, Salon Envy, and a named individual.¹ We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor seeks only the names of companies that applied and were granted or denied assistance in two city programs. Thus, the portions of the submitted documents that do not consist of the company names requested are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release that information in response to the request.

Next, we understand Le Petite and Quilted Skein assert their information was supplied with the expectation of confidentiality. Information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

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 only received comments from 2119 Dad, Big State, D&G, Hill, Julie B, Le Petite, Quilted Skein, Réve, and Salon Envy. Thus, we have no basis to conclude any of the remaining interested third parties has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the city may not withhold any of the responsive information on the basis of any proprietary interest any of the remaining interested third parties may have in the information.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Hill and Réve raise section 552.101 of the Government Code in conjunction with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) for the requested information. At the direction of Congress, the Secretary of

¹ As of the date of this letter, we have not received any comments from the EDC or remaining named individuals explaining why any portion of the submitted information should not be released to the requestor. Although Big State and Salon Envy raise section 552.101 of the Government Code, they make no arguments to support this exception. Therefore, we assume Big State and Salon Envy have withdrawn their claims that this section applies to the submitted information. *See* Gov’t Code §§ 552.301, .302.

Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* HIPAA, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, excepted as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act in Open Records Decision No. 681 (2004). In that decision, we noted section 164.512 of title 45 of the Code of Federal Regulations provides a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* ORD 681 at 8; *see also* Gov’t Code §§ 552.002, .003, .021. We therefore held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v Tex. Dep’t of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9 (2004); *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make confidential information that is subject to disclosure under the Act, the city may not withhold any portion of the responsive information on that basis.

Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See* Gov’t Code § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). 2119 Dad, Big State, D&G, Hill, Julie B, Le Petite, Quilted Skein, Réve, Salon Envy, and the named individual argue their information consists of trade secrets subject to section 552.110(b). Upon review, however, we find 2119 Dad, Big State, D&G, Hill, Julie B, Le Petite, Quilted Skein, Réve, Salon Envy, and the named individual have failed to provide specific factual evidence demonstrating any portion of the information at issue is a trade secret. Therefore, the city may not withhold any of the responsive information under section 552.110(b) of the Government Code.

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[.]” *Id.* § 552.110(c). 2119 Dad, Big State, D&G, Hill, Julie B, Le Petite, Quilted Skein, Réve, Salon Envy, and the named individual argue their information consists of commercial or financial information subject to section 552.110(c). Upon review, however, we find 2119 Dad, Big State, D&G, Hill, Julie B, Le Petite, Quilted Skein, Réve, Salon Envy, and the named individual have failed to provide specific factual evidence demonstrating the responsive 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 of the responsive information under section 552.110(c) of the Government Code.

Section 552.1101(a) of the Government Code excepts from disclosure “information submitted to a governmental body by a vendor, contractor, potential vendor, or potential contractor in response to a request for a bid, proposal, or qualification[.]” *Id.* § 552.1101(a). Upon review, we find Big State, Hill, and Réve have failed to demonstrate the applicability of section 552.1101(a) to any of the responsive information. Accordingly, the city may not withhold any of the information at issue under section 552.1101(a). As no further arguments against disclosure were made, the city must release the responsive 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/mo

Ref: ID# 836927

Enc. Submitted documents

c: Requestor
(w/o enclosures)