



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 2, 2020

Mr. Jeffrey W. Giles
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2020-22125

Dear Mr. Giles:

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# 842692 (GC No. 26748).

The Houston Airport System (the "system") received a request for information pertaining to a specified request for proposals. The system claims the submitted information is excepted from disclosure under section 552.104 of the Government Code. Additionally, the system states release of the submitted information may implicate the proprietary interests of Gilbreath Communication ("Gilbreath"). Accordingly, the system states, and provides documentation showing, it notified Gilbreath 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 considered the exception the system claims and reviewed the submitted information.

Initially, we note the requestor specifically excludes financial and tax information from her request. Therefore, those types of information are not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the system need not release such information in response to this request.

Next, we must address the system's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental

body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state the system received the request for information on May 28, 2020. You inform us the system operated on a skeleton crew from March 27, 2020, until June 4, 2020. This office does not count the date the request was received or holidays, including skeleton crew days observed by a governmental body, for the purpose of calculating a governmental body's deadlines under the Act. Therefore, the request for information is deemed received on June 5, 2020. Accordingly, the system's ten-business-day deadline was June 19, 2020. However, you did not request a ruling from this office until June 26, 2020. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the system failed to comply with the requirements of section 552.301 in requesting this decision from our office.

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 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). Although the system claims section 552.104 of the Government Code for the information at issue, we find the system has failed to establish a compelling reason to address this exception. However, because third party interests can provide a compelling reason to overcome the presumption of openness against disclosure of the information at issue, we will consider whether the responsive information may be withheld on behalf of Gilbreath.

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) 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 Gilbreath explaining why the information at issue should not be released. Therefore, we have no basis to conclude Gilbreath has a protected proprietary interest in the responsive information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the system may not withhold the responsive information on the basis of any proprietary interest Gilbreath may have in the information.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. As no further exceptions to disclosure have been raised, the system must release the responsive

information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,

Alexandra C. Burks
Attorney
Open Records Division

ACB/mo

Ref: ID# 842692

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)