



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2004

Ms. Paige H. Saenz
Barney Knight & Associates
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2004-0487

Dear Ms. Saenz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194845.

The City of Lago Vista (the "city"), which you represent, received a request for six categories of information on September 4, 2003 and a clarified request for ten items of information relating to Marshall's Ranch entities and projects in a letter dated October 27, 2003. In a letter dated November 19, 2003, the city received an additional request for an index and description of the documents the city intends to withhold from the requestor pending a ruling from this office. The city received another request for information regarding "[a]ll documents including memoranda, reports, and correspondence (including e-mail) between the City of Lago Vista and Texas American Title regarding Marshall's Harbor and Marshall's Vista subdivision and marina development" from the same requestor in a letter dated December 1, 2003. You state that some of the responsive information will be released to the requestor. You claim that the remaining requested information may be confidential under section 552.110 of the Government Code, but make no arguments and take no position as to whether the information is so excepted from disclosure. You inform this office and provide documentation showing that you have notified the interested third party, Texas American Title ("TAT"), whose proprietary interests may be implicated, of the requests and TAT's right to submit arguments as to why information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public

Information Act (the "Act") in certain circumstances). We have reviewed the representative sample of information you submitted and considered your claims.¹ We have also received and considered the requestor's comments. See Gov't Code § 552.304.

Initially, we note that the Act does not require the city to create new information in response to a request.² However, the city must make a good faith attempt to relate a request to information it holds. See Open Records Decision No. 561 at 8 (1990). The requestor in this case asks the city to provide her with an "index of the documents the City intends to withhold pending the ruling from the Attorney General, and a description of the said documents." The city claims that this information does not exist. Thus, the city is not required to create an index and description of documents as requested. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed) (governmental body not required to disclose information that did not exist at time request was received). We also note that the city is not required to release information that the city has submitted to the Attorney General for a letter ruling. See generally Gov't Code § 552.301. Likewise, section 552.305(a) of the Government provides that if a governmental body believes that a request for information implicates a third party's privacy or proprietary interests, the governmental body may decline to release the requested information for the purpose of requesting an attorney general decision under section 552.301. See Gov't Code § 552.305(a). Therefore, the city may withhold the information it has submitted to our office for review until a ruling is issued regarding the information at issue.

We now address your claims regarding the submitted information. 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 requested information relating to that party should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, TAT has not submitted comments to this office explaining why any portion of the requested information should not be released to the requestor. Therefore, TAT has provided us with no basis to conclude that it has a protected proprietary interest in any of the submitted information. See, e.g., Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, the submitted information is not

¹ We 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.

² See Open Records Decision No. 452 at 2-3 (1986); see also *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. - San Antonio 1978, writ dismissed).

excepted from disclosure under section 552.110 of the Government Code, and it must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

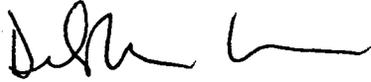
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 194845

Enc. Submitted documents

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