



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2005

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2005-08204

Dear Ms. DeLuca:

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# 231862.

The City of College Station (the "city") received a request for (1) all agreements with a named individual, the Adam Corporation, or TAC Realty, and (2) all agreements related to a specified hotel and conference center project. You state that you have released some of the requested information, but you claim that the submitted information is exempted from disclosure under sections 552.105 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.131(a) of the Government Code exempts from public disclosure a business prospect's trade secret or commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate,

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.

stay, or expand in or near the governmental body's territory. Gov't Code § 552.131(a). Section 552.131(a) only protects the proprietary information of a third party, not a governmental body. After reviewing the city's arguments and the submitted information, we conclude that, while the city generally alleges that release of the submitted information would cause substantial harm to negotiations between the city and third party Northgate Development Partners, L.L.C. ("NDP"), the city has not demonstrated that the submitted information is either protected trade secret information or commercial or financial information of a business prospect. Therefore, we conclude that section 552.131(a) does not apply to the submitted information.

Section 552.131(b) of the Government Code provides that "[u]nless and until an agreement is made with [a] business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure]." Gov't Code § 552.131(b). You inform us that the submitted information relates to pending economic development negotiations involving the city and NDP. You also indicate that the submitted agreement includes information concerning possible financial or other incentives being offered to NDP. Upon review of your arguments and the submitted information, we conclude that the city may withhold some of the submitted information, which we have marked, under section 552.131(b). We note that the applicability of section 552.131 ends once the city finalizes an agreement with the business prospect. *See* Gov't Code § 552.131(c). However, we find you have not sufficiently demonstrated how the remaining information consists of a financial or other incentive for purposes of section 552.131(b). Therefore, we conclude the city may not withhold any of the remaining information under section 552.131(b).

We next address your claim under section 552.105 of the Government Code with respect to the remaining information. This section excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision Nos. 564 (1990), 357 (1982), 222 (1979). Information excepted under section 552.105 that pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records Decision Nos. 310 (1982), 265 (1981). A governmental body may withhold information "which, if released, would impair or tend to impair [its] 'planning and negotiating position in regard to particular transactions.'" Open Records Decision No. 357 at 3 (1982) (quoting Open Records Decision No. 222 (1979)). When a governmental body has made a good faith determination that the release of information would damage its

negotiating position with respect to a real estate transaction, the attorney general will accept that determination unless the records or other information show the contrary as a matter of law. Open Records Decision No. 564 (1990).

In this instance, the city states that the remaining submitted information discloses the location and price of real property that the city is negotiating to secure for a public purpose. Further, the city inform us that the project at issue has not been publicly announced and that the agreement to secure the property has not been finalized. You advise that release of the remaining submitted information would harm the city's negotiating position with respect to acquisition of the property at issue. Based on your representations and our review, we conclude that the city may withhold the information that we have marked pursuant to section 552.105. We find, however, that the remaining information does not pertain to the location, appraisals, or purchase price of property for purposes of section 552.105; therefore, none of the remaining information may be withheld on that basis

In summary, the information we have marked may be withheld under sections 552.131(b) and 552.105 of the Government Code. The remaining information 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 231862

Enc. Submitted documents

c: Ms. Dorothy Beaver
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(w/o enclosures)