



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

September 13, 2005

Mr. John T. Patterson  
Assistant City Attorney  
Legal Services  
P. O. Box 2570  
Waco, Texas 76702-2570

OR2005-08315

Dear Mr. Patterson:

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# 232106.

The City of Waco (the "city") received a request for the latest correspondence between a named company and the city. You state that the city will make some of the information available to the requestor, but claim that a portion of the submitted information is excepted from disclosure under section 552.131 of the Government Code. You raise sections 552.101, 552.104, 552.110, 552.113, and 552.114 of the Government Code as possible exceptions to disclosure but make no arguments regarding these exceptions and instead state that the city will rely on a third party to submit arguments. You state, and provide documentation showing, that you have notified LS Power Development, LLC ("LS") of the city's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note that 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, LS has not submitted to this office any reasons explaining why its information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information, and none of it may be withheld on that basis. *See, e.g.*, Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). We now address your arguments.

You contend that the marked information in Exhibit 3 is excepted under section 552.131 of the Government Code. Section 552.131 provides:

(b) Unless and until an agreement is made with the 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 state that incentives are being offered to LS by certain governmental entities and the incentives have not been finalized. Based on your representations, we agree that the information you have marked in Exhibit 3 is information about an incentive being offered to a business prospect that has not been finalized. Accordingly, the information you have marked in Exhibit 3 may be withheld under section 552.131(b).

The submitted information also contains an e-mail address obtained from the public. Section 552.137 makes certain e-mail addresses confidential. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The city must, therefore, withhold the e-mail address we have marked under section 552.137.

In summary, the city may withhold the information it has marked in Exhibit 3 under section 552.131 of the Government Code. The city must withhold the e-mail address we have

marked under section 552.137 of the Government Code. The remaining submitted information must be released.

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,

A handwritten signature in black ink, appearing to read "Louis T. Dubuque". The signature is written in a cursive style with a large, sweeping initial "L".

Louis T. Dubuque  
Assistant Attorney General  
Open Records Division

LTD/jh

Ref: ID# 232106

Enc. Submitted documents

c: Ms. Ruth Pilant  
596 Mt. Moriah Rd  
Riesel, Texas  
(w/o enclosures)