



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2006

Mr. Marcus L. Winberry
City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2006-01877

Dear Mr. Winberry:

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# 243162.

The City of Conroe (the "city") received a request for all proposals and papers relating to the potential agreement between HDG Mansur and the city regarding the purchase, renovation, and tax abatement of the Del Lago Resort and Conference Center. The city informs us that you are releasing some of the requested information to the requestor. You claim that most of the submitted information is excepted from disclosure under section 552.131 of the Government Code. You have notified HDG Mansur of the request for information pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 the Act in certain circumstances). We have considered the exception you claim and reviewed 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 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 decision, HDG Mansur has not submitted to this office any reasons explaining why its information should not be released. Therefore, the interested third party 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). Accordingly, we conclude that the city may not withhold any portion of the submitted information on the basis of any proprietary interest HDG Mansur may have in the 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 state that the submitted information is a product of the city’s negotiations with HDG Mansur over financial or other incentives to be offered by the city. You inform us that the negotiations were ongoing at the time of receipt of this public information request and that they remain in progress. Upon review of the submitted documents, we find that they contain proposed incentives requested by HDG Mansur. The city has not shown that any of the submitted information relates to a financial or other incentive that is being offered by the city to a business prospect. *See id.* § 552.131(b). Therefore, you have not demonstrated that any of the submitted information is excepted from disclosure under section 552.131(b) of the Government Code. As you make no other argument against disclosure, and the information is not otherwise confidential by law, the submitted 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. 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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/er

Ref: ID# 243162

Enc. Submitted documents

c: Mr. Howard Roden
The Courier
P.O. Box 609
Conroe, Texas 77305
(w/o enclosures)