



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2006

Ms. Veronica Ocañas
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2006-01880

Dear Ms. Ocañas:

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# 243093.

The City of Corpus Christi (the "city") received a request for 1) all data contained in the city's land and commercial comparable sales database; 2) all land and commercial comparable sales found in appraisals of commercial real estate the city received in 2004 and 2005; and 3) any sales data the city maintains with confirmed prices from sales of land and commercial property since January 1, 2003. You claim that Exhibit D is excepted from disclosure under section 552.105 of the Government Code. Additionally, you state that Exhibits A through C may contain the proprietary information of a third party. Pursuant to section 552.305 of the Government Code, you notified Thomas F. Dorsey ("Dorsey"), American Appraisers, Inc. ("American"), and Corpus Christi Appraisal Service, Inc. ("Corpus") of the request and of their opportunity to submit comments to this office. 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 to disclosure in certain circumstances). We have considered the arguments and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code. Subsections (a) and (b) of section 552.301 require a governmental body requesting

an open records ruling from this office to “ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.” Gov’t Code § 552.301(a), (b). You did not raise section 552.105 until after the ten-business-day deadline had passed. Section 552.105 is a discretionary exception to disclosure that protects a governmental body’s interests and is waived by a governmental body’s failure to comply with section 552.301 of the Government Code. *See* Open Records Decision No. 564 (1990) (governmental body may waive statutory predecessor to section 552.105); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, Exhibit D is not excepted from disclosure under section 552.105 of the Government Code and it must be released.

Next, 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, Dorsey has not submitted to this office any reasons explaining why his information should not be released. American responded to the section 552.305 notice by asserting that its information is proprietary, but provided no explanation or support for its claim. Although American stated that it would be submit additional arguments in support of its claim, no arguments were ever received by this office. We thus have no basis for concluding that any portion of either Dorsey’s or American’s 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). Accordingly, Exhibits A and B must be released.

Corpus responded to the section 552.305 notice by stating that its appraisals were performed confidentially for the city. However, information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987). Consequently, unless Corpus’ information falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

We also understand Corpus to assert that its information is subject to section 552.110(b) of the Government Code, which protects commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. Gov’t Code

§ 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

Corpus claims that release of its “commercial appraisal database” would result in “potential substantial competitive harm[.]” However, the only information submitted by the city that pertains to Corpus are two appraisal reports. Corpus has provided this office with no arguments explaining how release of the specific appraisal reports at issue would result in significant competitive harm to its interests. *See* Open Records Decision Nos. 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). As such, Exhibit C may not be withheld under section 552.110(b) of the Government Code. Accordingly, the submitted appraisal reports must be released in their entirety.

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).

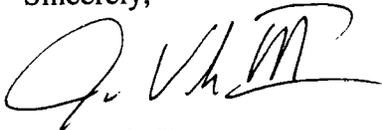
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,

A handwritten signature in black ink, appearing to read 'J. Vela III', written in a cursive style.

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 243093

Enc. Submitted documents

c: Abbigail Pendergraft
O'Connor & Associates
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(w/o enclosures)