



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2006

Mr. Alan J. Bojorquez
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OR2006-04671

Dear Mr. Bojorquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 248289.

The City of Dripping Springs (the "city"), which you represent, received a request for applications for planned development districts. You state that most of the responsive information, including the Planned Development District Agreement, has been released. You claim, however, that the submitted Economic Development Agreement (the "Agreement") is excepted from disclosure under sections 552.106 and 552.131(b). You also state that an interested third party, Barshop & Oles Company ("Barshop & Oles"), may have a proprietary interest in the Agreement. Accordingly, you notified Barshop & Oles of the request and of its opportunity to submit comments to this office explaining why the submitted documents 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); Open Records Decision No. 542 (1990) (determining that 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 in certain circumstances). We have considered the city's arguments and have reviewed the information at issue. We have also considered the comments submitted on behalf of the requestor. *See* Gov't Code § 552.304 (providing that any interested party may submit comments explaining why requested information should or should not be released).

Section 552.106 of the Government Code excepts from required public disclosure “[a] draft or working paper involved in the preparation of proposed legislation[.]” Gov’t Code § 552.106(a). Section 552.106(a) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 at 1 (1987). The purpose of this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body; therefore, section 552.106 encompasses only policy judgments, recommendations, and proposals involved in the preparation of proposed legislation and does not except purely factual information from public disclosure. *Id.* at 2.

You state that Barshop & Oles is proposing a large development in the city. You further state that Barshop & Oles drafted the Agreement as a starting place for consideration and negotiation regarding this matter. You assert that the Agreement is excepted under section 552.106 because it includes “legislative and policy matters” under consideration by the city council. We disagree. Section 552.106 only applies to drafts and working papers prepared by persons with some official responsibility to prepare them for the legislative body. Open Records Decision No. 429 at 5 (1985). It does not apply to materials prepared by an agency or other entity that has no official responsibility to do so but only acts as an interested party who wishes to influence the legislative process. *Id.* (stating that Gov’t Code § 552.106 does not except documents concerning Texas Turnpike Authority’s efforts to persuade various cities, which are legislative bodies, to enact ordinances governing land use or building restrictions). Based on your representations regarding the city’s relationship with Barshop & Oles and the purpose of the Agreement, we conclude that section 552.106 is inapplicable in this instance.

You also argue that the Agreement is excepted under section 552.131(b), which protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person unless and until an agreement is made with the business prospect. Gov’t Code § 552.131(b). As previously noted, the Agreement was drafted by Barshop & Oles. You do not assert that any of the inducements to Barshop & Oles contained in the Agreement were actually offered by the city or by another person. Section 552.131(b) only excepts those incentives offered to the business prospect by a governmental body or another person, it does not except incentives requested by the business prospect. We, therefore, conclude that the city has failed to demonstrate the applicability of section 552.131(b) to the submitted document.

Finally, 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, Barshop & Oles has not submitted to this office any reasons explaining why the Agreement should not be released. We thus have no basis to conclude that the release of the Agreement will harm the proprietary interests of Barshop & Oles. *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, the Agreement 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).

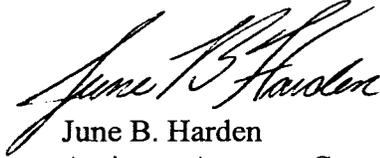
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk

Ref: ID# 248289

Enc: Submitted documents

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