



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2006

Ms. Jeanene McIntyre
Assistant City Attorney
City of Arlington
P. O. Box 90231
Arlington, Texas 76004-3231

OR2006-11615

Dear Ms. McIntyre:

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# 260980.

The City of Arlington (the "city") received a request for information relating to the "Flood Hazards Ordinance of the City [of] Arlington," "Johnson Creek," and development projects identified as the "Glory Park" and "Stadium" projects. You claim that some of the submitted information is excepted from disclosure under sections 552.106 and 552.131 of the Government Code.¹ You also indicate that release of some of the submitted information may implicate the proprietary interests of Hicks Holdings ("Hicks"), Texas Rangers Baseball

¹ Although you also initially raised sections 552.107, 552.110, 552.111, and 552.137 of the Government Code, you have not submitted any arguments regarding the applicability of these exceptions nor have you identified any information you seek to withhold under these exceptions. Therefore, we assume you no longer assert these exceptions to disclosure. See Gov't Code §§ 552.301, .302.

Partners (the "Texas Rangers"), Southwest Sports Group ("SSG"), the Dallas Cowboys, and Applied Ecological Services ("AES"). Accordingly, you inform us, and provide documentation showing, that you notified Hicks, the Texas Rangers, SSG, the Dallas Cowboys, and AES of the request and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* 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 exceptions you claim and reviewed the submitted representative samples of information.² We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address the city's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You state that the city received this request on July 19, 2006. The fifteenth business day after the city received the request was August 9, 2006. The envelope in which the city submitted the information at issue bears a postmark date of August 10, 2006. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the city did not submit the information at issue within fifteen business days and has failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling

² We assume that the 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.

reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you raise section 552.106 of the Government Code, that provision is a discretionary exception under the Act that may be waived. See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 470 (1987). You also raise subsection 552.131(b) of the Government Code. However, unlike subsection 552.131(a) of the Government Code, which protects third-party proprietary information, subsection 552.131(b) protects a governmental body's interests. Thus, subsection 552.131(b) is also a discretionary exception to disclosure and may be waived by a governmental body's failure to comply with section 552.301. See ORD 665 at 2 n.5, 663 at 5, and 470. Because the city has failed to comply with section 552.301, it has waived its claims under section 552.106 and subsection 552.131(b) and neither exception can constitute a compelling reason sufficient to overcome the presumption of openness. Accordingly, the city may not withhold any of the submitted information under either section 552.106 or subsection 552.131(b) of the Government Code. Nevertheless, in this instance, because you state third-party interests are at issue, we may address the arguments of interested third parties.

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, Hicks, the Texas Rangers, SSG, the Dallas Cowboys, and AES have not submitted to this office any reasons explaining why any of the submitted information should not be released. We thus have no basis for concluding that the release of any portion of the submitted information pertaining to these entities would harm their proprietary interests. 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). Accordingly, we conclude that the city may not withhold any portion of the submitted information on the basis of any proprietary interest Hicks, the Texas Rangers, SSG, the Dallas Cowboys, and AES may have in the information. Consequently, the requested 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 260980

Enc. Submitted documents

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