



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 28, 2008

Mr. Loren B. Smith  
Olson & Olson L.L.P.  
Wortham Tower, Suite 600  
2727 Allen Parkway  
Houston, Texas 77019

OR2008-14646

Dear Mr. Smith:

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# 325931.

The City of Waller (the "city"), which you represent, received a request for the application for public incentives, financing, site plans, proforma, and financial statements for a specified proposed development. You state that you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.131 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(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(a)-(b). Section 552.131(a) excepts from disclosure only "trade secret[s] of [a] business prospect" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." *Id.* Thus, the scope of section 552.131(a) is co-extensive with that of section 552.110 of the Government Code. *See id.* § 552.110(a)-(b).

You indicate that the submitted information is related to economic development negotiations involving a governmental body and a business prospect. You contend that the information involves a trade secret of the business prospect or commercial or financial information whose disclosure would cause substantial competitive harm to the person from whom the information was obtained. You have not demonstrated, however, that any of the submitted information constitutes a trade secret under section 552.110(a). *See* Open Records Decision No. 552 at 5 (1990) (attorney general will accept private person's claim under Gov't Code § 552.110(a) if person establishes *prima facie* case for trade secret exception and no one submits argument that rebuts claim as matter of law). Likewise, you have not shown that any of the submitted information consists of commercial or financial information whose disclosure would cause substantial competitive harm. *See* Gov't Code § 552.110(b); Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Nor have we received arguments from the third party whose information is at issue. *See* Gov't Code § 552.305. We therefore conclude that the city may not withhold any of the submitted information under section 552.131(a). As you raise no further exceptions for the remaining information, it 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

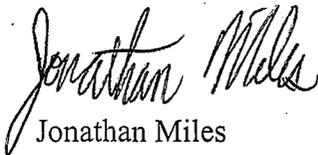
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/jh

Ref: ID# 325931

Enc. Submitted documents

c: Ms. Jessica Miller  
301 Commerce Street, Suite 3635  
Fort Worth, Texas 76102  
(w/o enclosures)