



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2009

Ms. Angela M. DeLuca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2009-06202

Dear Ms. DeLuca:

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# 342785.

The City of Bryan (the "city") received a request for correspondence among city employees regarding a specified partnership and the Traditions project from a specified period of time.¹ You claim that the submitted e-mails and their accompanying information are exempted from disclosure under sections 552.107, 552.111, 552.131, and 552.137 of the Government Code. Because release of some of the requested information may implicate the proprietary interests of a third party, Traditions Acquisitions Partnership, LP ("TAP"), pursuant to section 552.305 of the Government Code you were required to notify TAP of the request and of its opportunity to submit comments to this office explaining why its information should be withheld from disclosure. *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

¹As you have failed to submit a copy of the request for information, we take our description from your brief.

considered the exceptions you claim and reviewed the submitted representative sample of information.²

We must first address the city's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, within fifteen business days of receiving the request, a governmental body is required to submit to this office (1) 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. *See id.* § 552.301(e). As of the date of this letter, you have not submitted to this office a copy of the written request for information. Consequently, we find that the city has failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) 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 as to why the information should not be disclosed. *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). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See Open Records Decision No. 150 at 2 (1977)*. Sections 552.107, 552.111, and 552.131(b) of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.111)*. In failing to comply with section 552.301, the city has waived its claims under sections 552.107, 552.111, and 552.131(b) and therefore may not withhold the requested information under these exceptions. However, your claims under sections 552.131(a) and 552.137 of the Government Code can provide compelling reasons for non-disclosure. Therefore, we will address the submitted arguments under these exceptions.

²We assume that the representative 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.

Section 552.131 relates to economic development information and provides in pertinent 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.

Gov't Code § 552.131(a). Section 552.131(a) is co-extensive with section 552.110 of the Government Code, which protects third party interests. *See id.* § 552.110(a)-(b).³ You state that the submitted information should be excepted from disclosure under section 552.131(a) because its release would harm the city and its third party business prospect, TAP. We note that, like section 552.110, section 552.131(a) protects the interests of third parties, not governmental bodies. However, we have not received any arguments from TAP explaining that the submitted information contains TAP's trade secrets or its commercial or financial information. *See id.* § 552.305(d)(2)(B) (providing 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 as to why information relating to that party should be withheld from public disclosure). Because TAP has not demonstrated that the information at issue qualifies as a trade secret or that release of the information at issue would result in substantial competitive harm, we conclude that none of the information at issue may be withheld pursuant to section 552.131(a).

You also raise section 552.137 of the Government Code, which provides in part as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

³Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See id.* § 552.110(a), (b).

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

Id. § 552.137(a)-(c). Section 552.137 excepts from disclosure an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body, unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by section 552.137(c). We have marked e-mail addresses within the submitted information that are generally confidential under section 552.137(a). The city must withhold these addresses, unless they are subject to the provisions of section 552.137(c) or their owners have consented to their release. The remaining information at issue must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Reg Hargrove", with a long horizontal flourish extending to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/sdk

Ref: ID# 342785

Enc. Submitted documents

c: Requestor
(w/o enclosures)