



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2010

Mr. B. Scott Osburn
Assistant City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2010-01128

Dear Mr. Osburn:

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# 368060.

The City of Killeen (the "city") received a request for all plat case data associated with the city's Diamond Hills Addition. Although you take no position as to the public availability of the submitted information, you state its release may implicate the proprietary interests of Diamond "C" Homes ("Diamond"), Bentina, Ltd. ("Bentina"), Killeen EGS Property, Ltd. ("EGS"), and Killeen Engineering & Surveying ("Killeen Engineering"). Thus, pursuant to section 552.305 of the Government Code, you notified Diamond, Bentina, EGS, and Killeen Engineering of the request and of the companies' right to submit arguments to this office as to why their information should not be released. Gov't Code § 552.305(d); *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 under in certain circumstances). We have reviewed the submitted information.

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, we have not received comments from Diamond, Bentina, EGS, or Killeen Engineering explaining why any portion of the submitted

information should not be released. Therefore, we have no basis to conclude these third parties have protected proprietary interests in the submitted information. *See id.* § 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). Consequently, the city may not withhold the submitted evaluation on the basis of any proprietary interest Diamond, Bentina, EGS, or Killeen Engineering may have in the information. As you raise no exceptions to disclosure, the submitted information must be released in its entirety 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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 368060

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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Diamond C Homes
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Killeen, Texas 76549
(w/o enclosures)

Mr. Gary Purser, Jr.
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Killeen, Texas 76541
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