



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2010

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street Third Floor
Fort Worth, Texas 76102

OR2010-07475

Dear Ms. Byles:

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# 380209 (PIR No. 2695-10).

The City of Fort Worth (the "city") received a request for information relating to appraisals of city buildings. You claim that the requested information is excepted from disclosure under sections 552.105 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note that the requestor only seeks access to comparable sales information contained in the submitted appraisals. Thus, the rest of the submitted information is not responsive to this request. This decision does not address the public availability of the submitted information that is not responsive to this request, and the city need not release that information in response to this request.

We next note that the responsive information is contained in completed appraisal reports that are subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). Thus, the responsive information must be released pursuant to section 552.022(a)(1), unless the information is excepted from disclosure under section 552.108 or confidential under other law. Although the city seeks to withhold the

responsive information under sections 552.105 and 552.131(b) of the Government Code, those sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to Gov't Code § 552.105 subject to waiver). As such, sections 552.105 and 552.131(b) are not other law that makes information confidential for the purposes of section 552.022(a)(1). Therefore, the city may not withhold any of the responsive information under section 552.105 or section 552.131(b). Section 552.131(a) is a confidentiality provision, however, for the purposes of section 552.022(a)(1). Accordingly, we will determine whether section 552.131(a) is applicable to any of the responsive information.

Section 552.131(a) of the Government Code provides as follows:

(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). We note that 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); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Thus, section 552.131(a) protects the proprietary interests of third parties that have provided information to governmental bodies, not the interests of governmental bodies themselves. Therefore, we do not address the city's arguments under section 552.131(a). In this instance, there has been no demonstration by a third party either that any of the responsive information constitutes a trade secret or that release of any of the responsive information would cause a third party substantial competitive harm. *See* ORD 552 at 5 (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), 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). We therefore conclude that the city may not withhold any of the responsive information under section 552.131(a) of the Government Code.

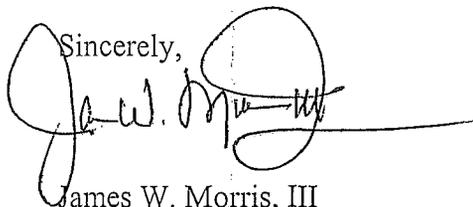
We note that some of the responsive information appears to be protected by copyright law. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary, the responsive information must be released in its entirety, but any information that is protected by copyright may only be released in compliance with copyright law.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/rf

Ref: ID# 380209

Enc: Submitted information

c: Requestor
(w/o enclosures)