



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2010

Ms. Paige Mims
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-08237

Dear Ms. Mims:

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# 381687.

The City of Plano (the "city") received a request for a named company's response to a specified competitive sealed proposal. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ You also state release of this information may implicate the proprietary interests of a third party. You inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the city has notified Motorola, Inc. ("Motorola") of the request and of its right to submit arguments to this office explaining why the submitted information should not be released. *See Gov't Code* § 552.305 (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

¹Although you also raise section 552.104 of the Government Code, you make no argument to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. *See Gov't Code* § 552.301, .302.

exception in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

We note 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 requested information relating to that party should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Motorola has not submitted any comments to this office explaining how release of the submitted information would affect its proprietary interests. Accordingly, none of the submitted information may be withheld on that basis. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

We further note the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2010-05225 (2010). In that ruling, our office determined the city must withhold portions of the information at issue under section 552.101 of the Government Code in conjunction with section 418.181 and under section 552.136 of the Government Code and release the remaining information in accordance with copyright law. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Thus, we determine the city must continue to rely on our ruling in Open Records Letter No. 2010-05225 as a previous determination and withhold or release the submitted information in accordance with that decision. See Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when records or information at issue are precisely same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); governmental body which received request for records or information is same governmental body that previously requested and received ruling from attorney general; prior ruling concluded that precise records or information are or are not excepted from disclosure under Act; and law, facts, and circumstances on which prior ruling was based have not changed since issuance of ruling). As we are able to make this determination, we do not address your arguments.

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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/eeg

Ref: ID# 381687

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. David Little
Motorola Inc
6450 Sequence Drive
San Diego, California 92128
(w/o enclosures)