



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 20, 2010

Mr. Warren M.S. Ernst
Chief of the General Counsel Division
Office of the City Attorney
City Hall
Dallas, Texas 75201

OR2010-10771

Dear Mr. Ernst:

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#387189.

The City of Dallas (the "city") received a request for proposals submitted in response to the city's RFP for Operational and Transactional Assistance Related to a New Markets Tax Credit Allocation from 2009. Although you take no position on whether the proposals are excepted from disclosure, you state release of this information may implicate the proprietary interests of S.B. Friedman & Company and Strategic Development Solutions, LLC. Accordingly, you have notified S.B. Friedman & Company and Strategic Development Solutions, LLC of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

Initially, you acknowledge that the city failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from our office. Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort

Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302 can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider the information at issue under the Act.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from S.B. Friedman & Company or Strategic Development Solutions, LLC. Thus, neither company has demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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). Accordingly, the city may not withhold the submitted information on the basis of any proprietary interests S.B. Friedman & Company or Strategic Development Solutions, LLC may have in the information. As no exceptions to disclosure have been raised, the information must be released.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/tp

Ref: ID#387189

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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