



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 13, 2010

Ms. Traci S. Briggs  
Deputy City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540

OR2010-15626

Dear Ms. Briggs:

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# 396840 (Killeen Reference No. W004011-072310).

The City of Killeen (the "city") received a request for the following three categories of information related to the third phase of a specified subdivision: (1) construction plans and calculations, (2) field inspections and inspection photographs, and (3) any soil surveys or other geotechnical information. You state the city is releasing a portion of the requested information to the requestor. Although you take no position as to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of Killeen Engineering & Surveying, Ltd. ("KES"). Thus, pursuant to section 552.305 of the Government Code, you notified KES of the request and of the company's right to submit arguments to this office as to why its 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 the Act 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 KES explaining why any portion of the submitted information should not be released. Therefore, we have no basis to conclude KES has any protected proprietary interest 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 any of the submitted information on the basis of any proprietary interest KES may have in the information. As you raise no exceptions to disclosure, the submitted information must be released in its entirety.

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](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/tp

Ref: ID# 396840

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Killeen Engineering & Surveying, Ltd.  
2901 East Stan Schleuter Loop  
Killeen, Texas 76542  
(w/o enclosures)