



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 26, 2011

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

OR2011-01328

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# 407742.

The City of Killeen (the "city") received two requests from the same requestor for plans and storm water management reports for a specified development and three specified properties. You state you have made some information available to the requestor. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state that release of this information may implicate the proprietary interests of third parties. Accordingly, you notified Killeen Engineering & Surveying, Killeen Sunflower, Inc., and Michalk, Beatty & Alcozer, L.P. of this request for information and of their right to submit arguments to this office as to why their submitted information should not be released. *See* Gov't Code § 552.305(d); 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 considered the exception you claim and reviewed the submitted information.

Although the city raises section 552.110 of the Government Code for the submitted information, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the city's argument under section 552.110 for the submitted information. We note that 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, the interested third parties have not submitted comments to this office regarding how the release of their submitted information will affect their proprietary interests. Thus, we have no basis to conclude that the release of any portion of the third parties' submitted information would implicate their proprietary interests. See, e.g., Open Records Decision Nos. 661 at 5-6 (1999) (stating that 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). Accordingly, the city may not withhold any portion of the submitted information on the basis of any proprietary interest the third parties may have in the information. As no further exceptions to disclosure have been raised, the submitted 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](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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/tf

Ref: ID# 407742

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Killeen Sunflower, Inc.  
Attn: Mr. Gary Purser  
2901 Stan Schlueter Loop  
Killeen, Texas 76542  
(w/o enclosures)

Killeen Engineering & Surveying  
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