



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 14, 2011

Mr. James D. Parker
Knight & Partners
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2011-08416

Dear Mr. Parker:

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#420755.

The City of Leander (the "city"), which you represent, received a request for eight categories of documents pertaining to a specified tract of land. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.105 of the Government Code. You also state this information may implicate the proprietary interests of third parties. Accordingly, pursuant to section 552.305 of the Government Code, you state you have notified K. Friese & Associates, Inc.; Kokel-Oberrender-Wood Appraisal, Ltd.; and SWCA Environmental Consultants 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); see also* Open Records Decision No. 542 (1990) (determining 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 Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, the city did not comply with its ten-business-day deadlines under subsection 552.301(b) of the Government Code in requesting this decision. *See Gov't Code § 552.301(b)*. The submitted information, therefore, is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *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 (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). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.103 and 552.105 of the Government Code, these sections are discretionary exceptions that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Record Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 564 at 2 (1990) (statutory predecessor of section 552.105 subject to waiver). In failing to comply with section 552.301, the city has waived sections 552.103 and 552.105 of the Government Code and may not withhold any of the requested information on the basis of those exceptions. However, because third-party interests can provide a compelling reason to withhold information, we will consider whether any of the submitted information may be excepted on that basis. We also note a portion of the information is subject to section 552.136 of the Government Code, which provides a compelling reason to withhold information; thus, we will also address this exception.¹

Next, we address your statement that the requested zoning ordinances and maps and Federal Emergency Management Agency studies and reports are “publicly available from the [c]ity, the internet and by contacting the appropriate [f]ederal governmental offices” and therefore not a part of the city's request for a ruling. You do not indicate whether the city possesses or has a right of access to any information responsive to this portion of the request. The Act generally does not require a governmental body to obtain information not in its possession. *See* Open Records Decision Nos. 558 at 2 (1990) (Act not applicable if governmental body does not have right of access to or ownership of information prepared for it by an outside entity), 445 at 2 (1986) (Act not applicable to information governmental body never possessed or was entitled to receive). However, a governmental body must make a good-faith effort to relate a request to any responsive information within its possession or control. Open Records Decision No. 561 at 8-9 (1990). We assume the city has made a good-faith effort to do so. Therefore, to the extent any information responsive to this portion of the request existed on the date the city received the request, we presume the city has released it. If not, the city must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to the requested information, it must release information as soon as possible).

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Furthermore, section 552.228 of the Government Code requires a governmental body to provide a requestor with a "suitable copy" of requested public information. Gov't Code § 552.228(a). We also note "[a] public information officer does not fulfill his or her duty under the Act by simply referring a requestor to a governmental body's website for requested public information." Open Records Decision No. 682 at 7 (2005). Instead, section 552.221 of the Government Code requires a governmental body "to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail." *Id.*; see Gov't Code § 552.221(b). Thus, the city must provide access to or copies of the responsive information to the requestor; however, we note a requestor may agree to accept information on a governmental body's website in fulfillment of a request for information under the Act. See ORD 682 at 7.

Next, 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, none of the third parties has submitted any comments to this office explaining how release of the submitted information would affect its proprietary interests. Accordingly, the city may not withhold any of the submitted information on the basis of any third party's proprietary interests. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating business enterprise claiming exception for commercial or financial information under section 552.110(b) must show by specific factual evidence release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret).

Section 552.136 of the Government Code provides "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); see *id.* § 552.136(a) (defining "access device"). Accordingly, the city must withhold the bank account and bank routing number we have marked under section 552.136 of the Government Code.² The city must release the remaining information.

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

²This office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including bank account and bank routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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/em

Ref: ID# 420755

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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