



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 15, 2011

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

OR2011-18455

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# 440356 (Killeen No. W006514-100311).

The City of Killeen (the "city") received a request for "building plans, drawings[,] and records regarding the drainage of water into the retention/collection area on the east side of the Sonic Restaurant [(1512 Ft. Hood Street)] which drains onto 2203 Jennifer Street (Quail Hollow Apartments)." You state you will release some of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Sonic Restaurant ("Sonic") and Turley & Associates, Inc. ("Turley"). Accordingly, you state, and provide documentation showing, you notified Sonic and Turley of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have 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 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 Sonic or Turley explaining why the submitted information should not be released. Therefore, we have no basis to conclude Sonic or Turley have a 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). Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest Sonic or Turley may have in the information. As no exceptions have been claimed for the submitted information, the city must release it.

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,



Sean Opperman  
Assistant Attorney General  
Open Records Division

SO/dls

Ref: ID# 440356

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Gary Hendriz  
Sonic Restaurant  
1514 South Fort Hood Street  
Killeen, Texas 76542  
(w/o enclosures)

Mr. Victor Turley  
Turley & Associates, Inc.  
301 North 3<sup>rd</sup> Street  
Temple, Texas 76501  
(w/o enclosures)