



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2012

Mr. John Knight
Deputy City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR2012-13770

Dear Mr. Knight:

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# 463631.

The City of Denton (the "city") received a request for the detailed development budget, ten-year *pro forma* documents, and general capital financing structure O'Reilly Hospitality Management ("O'Reilly") submitted to the city pursuant to a specified agreement. You claim the requested information is excepted from disclosure under section 552.131 of the Government Code and privileged pursuant to the Texas Disciplinary Rules of Professional Conduct. You also state release of this information may implicate the proprietary interests of O'Reilly. Accordingly, you state, and provide documentation showing, you notified O'Reilly of the request for information and of its 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 considered the submitted arguments and reviewed the submitted information.

Initially, 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 O'Reilly explaining why its information should not be released. Therefore, we have no basis to conclude O'Reilly has 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. Accordingly, the city may not withhold any of the information at issue on the basis of any proprietary interest O'Reilly may have in it.

Section 552.131 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a)-(b). We note the scope of section 552.131(a) is co-extensive with that of section 552.110 of the Government Code. *See id.* § 552.110(a)-(b); ORDs 661 at 5- 6, 552 at 5. Thus, section 552.131(a) protects the proprietary interests of third parties that have provided information to governmental bodies, not the interests of governmental bodies themselves. Therefore, we do not address the city's argument under section 552.131(a). There has been no demonstration by a third party that any of the information at issue constitutes a trade secret or that release of any of the information at issue would cause a third party substantial competitive harm. *See* ORDs 552 at 5 (attorney general will accept private person's claim under Gov't Code § 552.110(a) if person establishes *prima facie* case for trade secret exception, and no one submits argument that rebuts claim as matter of law), 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). Thus, the city may not withhold any of the submitted information under section 552.131(a) of the Government Code.

Section 552.131(b) of the Government Code protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. You assert the submitted information relates to negotiations between the city and

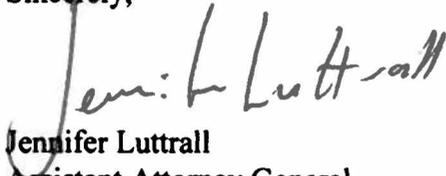
O'Reilly regarding the development and construction of an Embassy Suites Hotel and Conference and Exposition Center, a restaurant, and a second hotel to be located within the city. You state no agreement has been reached with O'Reilly regarding potential financial incentives. Upon review of the submitted information and your representations, we agree portions of this information consist of information about financial or other incentives being offered to a business prospect by the city. Accordingly, the city must withhold the information we have marked under section 552.131(b) of the Government Code. However, you have not demonstrated how the remaining information at issue consists of information about a financial or other incentive being offered to a business prospect. Consequently, none of the remaining information may be withheld under section 552.131(b).

You state "under the ethical rules of the Texas Disciplinary Rules of Professional Conduct . . . the attorneys have a clear ethical duty to safeguard the confidentiality of such communications." Thus, we understand you to assert the Texas Disciplinary Rules of Professional Conduct are applicable to the remaining information. However, you do not specify which rule you are asserting and have not explained how any of the Texas Disciplinary Rules of Professional Conduct except from disclosure the remaining information. Accordingly, none of the remaining information may be withheld on the basis of the Texas Disciplinary Rules of Professional Conduct. As no other exceptions to disclosure have been raised, the remaining 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 463631

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**