



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 2, 2013

Ms. Kristen L. Hamilton  
Assistant City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2013-05238

Dear Ms. Hamilton:

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# 482778.

The City of El Paso (the "city") received a request for correspondence during a specified time period between the certain officials or employees and any private entities pertaining to a partnership for a water park or aquatic facility and the proposal submitted by the private company for the water park or aquatic facility. You state you have made some information available to the requestor. You claim some of the requested information is excepted from disclosure under section 552.131 of the Government Code. You also state release of this information may implicate the proprietary interests of the private company at issue. Accordingly, you notified this company 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, part of which you state is a representative sample.<sup>1</sup> We have also received and considered comments

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

submitted to this office by the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released).

Initially, we note some of the submitted e-mail communications are not responsive to the instant request because the e-mails fall outside the date range specified in the request. We have marked this information as non-responsive. This ruling does not address the public availability of any information that is not responsive to the instant request, and the city is not required to release non-responsive information in response to the request.

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 the notified third party explaining why its information should not be released. Therefore, we have no basis to conclude the notified third party has a protected proprietary interest in the responsive 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 the notified third party 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.

Gov't Code § 552.131(a). 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 information at issue under section 552.131(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.<sup>2</sup> *See* Gov't Code § 552.117(a)(1). We note section 552.117(a)(1) encompasses an employee's personal cellular telephone number as long as the cellular service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1998) (Gov't Code § 552.117 not applicable to cellular mobile telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We have marked the cellular telephone number of a city employee. If the employee whose cellular telephone number is at issue timely elected to keep this number confidential pursuant to section 552.024 and the cellular service is not paid for by a governmental body, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city may not withhold this information under section 552.117(a)(1) if the employee did not timely elect to keep his cellular telephone number confidential pursuant to section 552.024 or if the cellular service is paid for by a governmental body. As no other exceptions to disclosure are raised, the city must release the remaining responsive 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 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

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<sup>2</sup>The 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).

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,

A handwritten signature in black ink, appearing to read 'Ana Carolina Vieira', with a long horizontal flourish extending to the right.

Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 482778

Enc. Submitted documents

c: Requestor  
(w/o enclosures)