



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2013

Mr. Gary Henrichson
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2013-10559

Dear Mr. Henrichson:

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# 490990 (PIR No. W011493-040213).

The City of McAllen (the "city") received a request for information pertaining to the city's efforts to encourage Simon Property Group, Inc. ("Simon") to expand a specified mall and information pertaining to any incentives being offered to Simon. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.131 of the Government Code. Additionally, you state release of the requested information may implicate the proprietary interests of Simon. You inform us Simon was notified of this request for information and of its right to submit arguments as to why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third parties to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, you raise section 552.110 of the Government Code as an exception to disclosure. However, because section 552.110 is designed to protect the interests of third parties, not

those of governmental bodies, a governmental body may not raise section 552.110 on behalf of a third party. Therefore, if we do not receive comments from a third party explaining why the information at issue should not be released, we will conclude section 552.110 is not applicable. 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 Simon explaining why any portion of the submitted information should not be released. Therefore, we have no basis to conclude Simon has a protected proprietary interest in the submitted information. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, third 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 submitted information on the basis of any proprietary interest Simon may have in it.

Section 552.131 of the Government Code relates to economic development information and provides in part:

(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). 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. 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

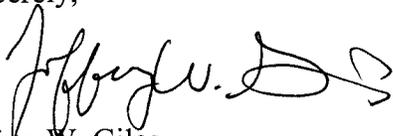
general will accept private person's claim under section 552.110(a) of Government Code if person establishes *prima facie* case for trade secret exception, and no one submits argument that rebuts claim as matter of law), 661 at 5-6. Thus, the city may not withhold any of the information at issue under 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 contains economic incentives offered by the city to Simon during the ongoing contractual negotiations between the parties. You also explain no agreement had been reached at the time of the request. Upon review, we find the information we have marked consists of information about financial or other incentives being offered by the city to a business prospect. Accordingly, the city may withhold the information we have marked under section 552.131(b) of the Government Code. However, you have not demonstrated how any of the remaining information at issue consists of information about a financial or other incentive being offered to a business prospect by the city. Consequently, none of the remaining information may be withheld under section 552.131(b). As no further exceptions are 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.texasattorneygeneral.gov/open_orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 490990

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Simon Property Group, Inc.
c/o Mr. Gary Henrichson
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P.O. Box 220
McAllen, Texas 78505-0220
(w/o enclosures)