



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 5, 2013

Mr. Bennett M. Wyse  
Counsel for the City of Coleman  
Messer, Rockefeller & Fort, PLLC  
4400 Buffalo Gap Road, Suite 2800  
Abilene, Texas 79606

OR2013-19316

Dear Mr. Wyse:

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# 504731 (MRF-081913-020-21-0003; MRF-081913-005-21-0004).

The City of Coleman (the "city") and the Coleman EDC (the "CEDC"), which you represent, received a request for information "pertaining to the current mesquite development project" with Alternative Energy Development, L.L.C. ("AED"), including information related to "the creation, authorization and commission" of any sub-committees and the current authorizations and responsibilities of a specified sub-committee. You state the city has no responsive information and the CEDC has no information responsive to the portions of the request related to sub-committees.<sup>1</sup> You also state the CEDC has released or will release some responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.105 and 552.131 of the Government Code. Additionally, you state the submitted information may implicate the proprietary interests of

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

AED and Mesquite Fuels, L.L.C. ("Mesquite"). Accordingly, the city and the CEDC notified AED and Mesquite of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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.

We note some of the submitted information, which we have marked, is not responsive to the instant request for information, as it was created after the date the request was received. This ruling does not address the public availability of any information that is not responsive to the request, and the CEDC need not release that information in response to this request. *See Bustamante*, 562 S.W.2d at 267-68; ORD 452 at 3 (governmental body not required to disclose information that did not exist at time request was received).

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from either third party. Thus, AED and Mesquite have not demonstrated they have protected proprietary interests in any of the submitted information. *See id.* § 552.110(a)-(b); 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 CEDC may not withhold any of the information at issue on the basis of any proprietary interest AED or Mesquite may have in the information.

Section 552.105 of the Government Code excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Gov't Code § 552.105. Section 552.105 is designed to protect a governmental body's planning and negotiating position with respect to particular transactions. Open Records Decision Nos. 564 at 2 (1990), 357 (1982), 310 (1982). Information that is excepted from disclosure under section 552.105 that pertains to such negotiations may be excepted from disclosure so long as the transaction relating to that information is not complete.

See ORD 310. A governmental body may withhold information “which, if released, would impair or tend to impair [its] ‘planning and negotiating position in regard to particular transactions.’” ORD 357 at 3 (quoting Open Record Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body’s planning and negotiating position with regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body’s good-faith determination in this regard, unless the contrary is clearly shown as a matter of law. See ORD 564.

You state the responsive information relates to on-going “negotiations between the [CEDC] and a business prospect regarding an economic development project and related incentives which involve and impact the location of real . . . property which will be used for a public purpose.” You also state the information at issue “involves and impacts the appraisals or purchase (or long-term lease) price” of the property. Thus, we understand you to argue release of the responsive information would impair the CEDC’s planning and negotiating position with respect to the property at issue. We have no indication the CEDC has failed to make such a determination in good faith. Based upon your representations and our review, we conclude the CEDC may withhold the submitted responsive information under section 552.105 of the Government Code. As our ruling is dispositive, we do not address your remaining claim.

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/bhf

Ref: ID# 504731

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Randall Terrell  
CEO  
Alternative Energy Development Management  
c/o Mr. Bennett M. Wyse  
Counsel for the City of Coleman  
Messer, Rockefeller & Fort  
4400 Buffalo Gap Road, Suite 2800  
Abilene, Texas 79606  
(w/o enclosures)

Mr. Jack Lauterbach  
Mesquite Fuels  
C/o Mr. Bennett M. Wyse  
Counsel for the City of Coleman  
Messer, Rockefeller & Fort  
4400 Buffalo Gap Road, Suite 2800  
Abilene, Texas 79606  
(w/o enclosures)