



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2016

Ms. Mariví Gambini
Paralegal
City of Irving
825 West Irving Boulevard
Irving, Texas 75060

OR2016-01863

Dear Ms. Gambini:

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# 595718.

The City of Irving (the "city") received a request for specified e-mails and a specified video recording. You state the city has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.131 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of OliverMcMillan. Accordingly, you state, and provide documentation showing, you notified OliverMcMillan 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 exception you claim and reviewed the submitted information.

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 OliverMcMillan explaining why the submitted information should not be released. Therefore, we have no basis to conclude OliverMcMillan 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 the submitted information on the basis of any proprietary interest OliverMcMillan may have in the information.

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 661 at 5-6, 552 at 5. 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. Gov't Code § 552.131(b). You state the information at issue relates to ongoing negotiations between the city and the third party regarding a development of a city-owned tract of land. You further state the city's negotiations with OliverMcMillan are continuing. However, upon review, we find you have not demonstrated any of the information at issue

consists of information about a financial or other incentive being offered to a business prospect. Consequently, none of the submitted information may be withheld under section 552.131(b) of the Government Code. As no further exceptions to disclosure have been raised, the city must release the submitted 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.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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bw

Ref: ID# 595718

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Dene Oliver
OliverMcMillan
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