



June 11, 2002

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR2002-3140

Dear Ms. DeLuca:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164157.

The City of College Station (the "city") received a request for fourteen categories of information related to the development and rezoning of certain areas and to "the Home Depot project." We note that the city's legal department has represented that its offices were closed on March 29, 2002. Therefore, this office received the request for a decision within the ten business day period mandated by section 552.301(a). You advise that you have released most of the requested information to the requestor. You claim that the remaining requested information regarding the Home Depot project is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.131 provides:

- (a) Information is excepted from the requirements of Section 552.021 if the information relates to economic development negotiations involving the governmental body and a business prospect that the governmental body seeks

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<sup>1</sup>We assume that the "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 that those records contain substantially different types of information than that submitted to this office.

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 the requirements of Section 552.021.

(c) After an agreement is made with the business prospect, this section does not except from the requirements of Section 552.021 information about a financial or other incentive being offered to the business prospect:

- (1) by the governmental body; or
- (2) by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source.

Gov't Code, § 552.131. You state that Home Depot is a business prospect that the city seeks to have locate within the city. You also state that economic development negotiations are ongoing between the city and Home Depot and that these negotiations have yet to result in an agreement. Finally, you state that the submitted information pertains to cash and other incentives being offered by the city to Home Depot. Therefore, we conclude that you may withhold the submitted information from disclosure pursuant to section 552.131(b) of the Government Code. We note, however, that the applicability of section 552.131(b) ends once an agreement is made with the business prospect. Gov't Code § 552.131(b), (c).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 164157

Enc. Submitted documents

c: Mr. Charles A. Ellison  
P.O. Box 10103  
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(w/o enclosures)