



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

August 28, 2003

Mr. Charles R. Kimbrough
Bickerstaff, Heath, Smiley, Pollan, Keever & McDaniel, L.L.P.
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR2003-6051

Dear Mr. Kimbrough:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186724.

The Village of Bee Cave (the "village"), which you represent, received a request for nine categories of information related to the development of certain properties. You state that some responsive information has been provided to the requestor. You claim that the remaining responsive information is excepted from disclosure under sections 552.103, 552.105, 552.106, 552.107, 552.110, 552.111, 552.117, 552.131, and 552.137 of the Government Code.¹ In addition, you indicate that you notified the third party developers (the "developers") of the request for information and of each party's right to submit arguments

¹As you did not raise section 552.103 as an exception to disclosure within ten business days of receiving the request, or submit to this office written comments stating the reasons why section 552.103 would allow the remaining responsive information to be withheld within the fifteen business day time period prescribed by section 552.301(e), we find that you have waived this exception. See Gov't Code §§ 552.301, .302; see also *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103), Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 473 (1987) (city's failure to meet 10-day deadline waived protections of sections 552.103 and 552.111).

as to why the requested information should not be released.² See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have received arguments from attorneys for Baldwin, CCNG, and Milam as to why their information should not be released. We have considered the claimed exceptions and reviewed the submitted information.

As a preliminary matter, we note that the village requested a decision from this office in relation to another request for some of the same information at issue in the present request.³ We ruled on that request in Open Records Letter No. 2003-5990 (2003), issued August 26, 2003. To the extent the information at issue here is identical to the information at issue in Open Records Letter No. 2003-5990, the village may rely on that decision as a previous determination regarding the public availability of the information. See Gov't Code § 552.301(f); *see also* Open Records Decision No. 673 (2001) (regarding previous determinations). With respect to other responsive information, the public availability of which was not addressed in Open Records Letter No. 2003-5990, we address the claimed exceptions to disclosure.

You claim that the information submitted as document nos. 127-134 consists of economic development information that is excepted from public disclosure under section 552.131 of the Government Code. Section 552.131 provides:

- (a) Information is excepted from the requirements of Section 552.021 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:

²The following third parties received notice pursuant to section 552.305: CCNG Development Company, L.P., CCNG Properties, L.P., and CCNG Realty, Inc. (collectively "CCNG"); Milam Galleria Holdings, L.L.C. ("Milam"); and Baldwin Properties, Ltd., Robert B. Baldwin III, and the Estate of Dorothy Baldwin (collectively "Baldwin").

³We note that these records were submitted as Exhibit J, document nos. 1-126 in both ORL No. 2003-5990 and this file.

(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 the village currently is involved in economic development negotiations with the developers that include discussions of "economic and other incentives." You inform us that the village and the developers have yet to reach an agreement. Based on your representations and our review of the submitted information, we conclude you may withhold document nos. 127-134 in their entirety under section 552.131(b) of the Government Code. As our ruling is dispositive, we do not address the other claimed exceptions.

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 Dep't of Pub. 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

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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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 186724

Enc. Submitted documents

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