



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2003

Mr. Arthur Troilo
Davidson & Troilo
7550 West IH-10, Suite 800
San Antonio, Texas 78229-5815

OR2003-7223

Dear Mr. Troilo:

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# 188390.

The Greater Kelly Development Authority (the "Authority"), which you represent, received two requests for information, which you have labeled Exhibit A and Exhibit C, from the same requestor. In Exhibit A, the requestor seeks access to or copies of information "that indicates (1) the amount of money that the Authority has paid to the S.A. Economic Development Foundation, Inc. [the 'EDF'], within the past twelve months, and (2) the purpose of these remittances." In Exhibit C, the requestor asks for information relating to offers made to Boeing Company. You assert the submitted information is excepted from disclosure under section 552.131 of the Government Code. Also, we acknowledge our receipt of comments from the requestor, as permitted by the Act. *See Gov't Code § 552.304* (permitting interested third party to submit comments explaining why information should or should not be released). We reviewed the information you submitted and considered the exception you claim. We have also considered comments we received from the requestor.

Initially, we note that you did not submit information responsive to Exhibit A. We assume the Authority has released this information to the requestor. However, if not, then the Authority must release information responsive to this request at this time. *See Gov't Code §§ 552.301(a), .302.*

Next, for the submitted information, we address your arguments under section 552.131 of the Government Code. Section 552.131(a) of the Government Code excepts from public disclosure a business prospect's trade secret or commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm 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 governmental body's territory. Gov't Code § 552.131(a). Section 552.131(a) only protects the proprietary information of a third party, not a governmental body. Because you have not adequately demonstrated that the submitted information is protected trade secret information or commercial or financial information of a business prospect, we conclude that section 552.131(a) does not apply to the submitted information.

Section 552.131(b) Code provides that "[u]nless and until an agreement is made with [a] 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(b). You state that the Authority is attempting "to attract an expansion of current Boeing facilities." Further, you indicate that release of the submitted information would place the Authority at a disadvantage with other competing jurisdictions. Upon review of your arguments and the submitted information, we conclude that the Authority may withhold some of the submitted information, which we have marked, under section 552.131(b). We note that the applicability of section 552.131 ends once the Authority finalizes an agreement with the business prospect. *See* Gov't Code § 552.131(c). However, we find you have not sufficiently demonstrated how the remaining information at issue consists of a financial or other incentive for purposes of section 552.131(b). Therefore, we conclude the Authority must release the remaining submitted information to the requestor.

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 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 188390

Enc: Submitted documents

c: Mr. Alfred E. Ehm
Texas Central Rail-Corridor Coalition, Inc.
170 Carousel Drive
San Antonio, Texas 78227-4712
(w/o enclosures)