



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2004

Mr. Craig Magnuson
Attorney
City of Mansfield - Legal Department
1200 East Broad Street
Mansfield, Texas 76063

OR2004-3651

Dear Mr. Magnuson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201010.

The City of Mansfield (the "city") received a request for "documents related to any agreement between Big League Dreams and either the [city], the Mansfield Economic Development Corporation, or the Mansfield Park Facilities Development Corporation, including, but not limited to, any agreement executed between such parties and any feasibility study or economic impact analysis concerning any such agreement." You state that you have released some of the requested information to the requestor. You claim, however, that the remaining requested information is excepted from disclosure under sections 552.105 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Public Information Act (the "Act"). Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Within fifteen business days of receiving the request, the governmental body must submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the

date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D).

You state that the city received this request on February 20, 2004. However, you did not submit a copy of the written request for information for our review until March 19, 2004. Thus, the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The city argues that portions of the submitted information are excepted under sections 552.105 and 552.131 of the Government Code. Sections 552.105 and 552.131(b) are discretionary exceptions under the Act and do not constitute a compelling reason sufficient to overcome the presumption that the requested information is public. *See* Gov't Code § 552.007(a); Open Records Decision No. 522 (1989) (discretionary exceptions in general). However, section 552.131(a) of the Government Code may provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Thus, we will address the city's section 552.131(a) argument.

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. After reviewing the city's arguments and the submitted information, we conclude that while the city has generally alleged that release of the submitted information would cause substantial harm to negotiations between the city and potential third parties involved, the city has not demonstrated that the submitted information is protected trade secret information or commercial or financial information of a business prospect. Therefore, we conclude that section 552.131(a) does not apply to the submitted information. Consequently, the submitted information must be released to the requestor in its entirety.

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,

Lauren E. Kleine

Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/seg

Ref: ID# 201010

Enc. Submitted documents

c: Mr. William R. Brown
1700 East Broad Street, #101
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(w/o enclosures)