ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2005

Mr. John T. Patterson
Assistant City Attorney
Legal Services
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2005-00394

Dear Mr. Patterson:

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# 216865.

The City of Waco (the "city") received a request for "access to all records in city possession pertaining to a proposal in Fall/Winter 2003 by David Wallace of Sugarland, TX for a hotel/mixed-use development for Downtown Waco." You indicate that some information has been released to the requestor. Although you make no arguments and take no position as to whether the submitted information is excepted from disclosure, pursuant to section 552.305 of the Government Code, you notified the following interested third parties of the request and of their right to submit arguments to this office as to why the requested information should not be released to the requestor: Asset Campus Housing ("ACH") and Stonehenge Development ("Stonehenge").[1] We have reviewed the submitted information and considered the submitted arguments.

We note that 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 requested information relating to that party should be withheld from disclosure.

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[1] *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither ACH nor Stonehenge has submitted comments to this office in response to the section 552.305 notice; therefore, we have no basis to conclude that these companies have a proprietary interest in the submitted information. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the city may not withhold any portion of the submitted information on the basis of any proprietary interest that ACH or Stonehenge may have in the information. As you claim no other exceptions, the city must release the submitted information in its entirety 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,

Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/sdk

Ref: ID# 216865

Enc. Submitted documents

c: Mr. J.B. Smith
Waco Tribune Herald
900 Franklin
Waco, Texas 76710
(w/o enclosures)

Mr. David G. Wallace
Asset Campus Housing
1800 Bering Drive, Suite 320
Houston, Texas 77057
(w/o enclosures)

Mr. Kevin J. Matocha
Stonehenge Development
9025 Ruland, Suite B
Houston, Texas 77055
(w/o enclosures)