



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2005

Ms. Veronica Ocanas
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469

OR2005-05723

Dear Ms. Ocanas:

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# 227159.

The City of Corpus Christi (the "city") received a request for twelve categories of information related to the city's Neighborhood Services and Home Fund. You inform us that you will release some of the requested information. You indicate, however, that release of the applications submitted in response to the Home Investment Partnership Program RFP may implicate the proprietary interests of interested third parties. Pursuant to section 552.305 of the Government Code, you notified the interested parties, Accessible Communities, Inc. ("Accessible"); Costa Tarragona I & II, Ltd. ("Costa"); Architect TKO & David L. Walker ("TKO"); Habitat for Humanity - Corpus Christi ("Habitat"); Merced Housing Texas & GMAT III Development, Ltd. ("Merced"); The Latino Education Project ("LEP"); Nueces County Community Action Agency ("NCCAA"); and TG 110, Inc. ("TG 110") of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the information you submitted and considered all of the submitted arguments.

Initially, we note that section 552.305 of the Government Code allows an interested third party ten business days from the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See Gov't Code § 552.305(d)(2)(B)*. Accessible, LEP, Merced, and TG 110 have responded to the notice and state that they do not object to the release of their information; therefore, the submitted information pertaining to these companies may not be withheld as proprietary information. However, as of the date of this letter, we have not received arguments from Costa, TKO, Habitat, and NCCAA for withholding the requested information. Therefore, we have no basis to conclude that the release of any of the submitted information would harm the proprietary interests of these companies. *See Gov't Code § 551.110(b)*; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret). Accordingly, we conclude that the city may not withhold any portion of the submitted information on the basis of any proprietary interest that Costa, Habitat, NCCAA, and TKO, may have in the information.

However, we note that the submitted information contains information that is confidential by law.¹ TG 110's submitted proposal contains Texas motor vehicle record information. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. You must withhold the Texas motor vehicle record information we have marked under section 552.130.

We also note that the submitted proposals for TG 110 and Costa contain bank account numbers. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code § 552.136. The city must, therefore, withhold the bank account numbers we have marked under section 552.136.

In summary, the city must withhold the Texas motor vehicle record information we have marked under section 552.130. The city must also withhold the account numbers we have marked under section 552.136. The remaining information must be released 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 227159

Enc. Submitted documents

c: Mr. George B. Clower
Saxet Center
P.O. Box 2525
Corpus Christi, Texas 78403
(w/o enclosures)

Merced Housing Texas
Attn: Susan R. Sheeran
212 West Laurel Street
San Antonio, Texas 78212
(w/o enclosures)

Housing and Community Services
Attn: Ronald C. Anderson
301 South Frio, Suite 480
San Antonio, Texas 78207-4426
(w/o enclosures)

Accessible Communities
Attn: Judy Telge
1537 Seventh Street
Corpus Christi, Texas 78404
(w/o enclosures)

The Latino Education Project
Attn: Frances Pawlik
1045 Airline Road, Suite #2
Corpus Christi, Texas 78412
(w/o enclosures)

Nueces County Community Action Agency
Attn: Joe A. Martinez
4660 Old Brownsville Road
Corpus Christi, Texas 78405
(w/o enclosures)

Habitat for Humanity
Attn: Lee W. Sloan
P.O. Box 3032
Corpus Christi, Texas 78463
(w/o enclosures)

Costa Tarragona I & II
Attn: Nancy Vera
5309 Transportation Boulevard
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(w/o enclosures)

Architect TKO & David L. Walker
3430 South Alameda Street
Corpus Christi, Texas 78411
(w/o enclosures)