



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2005

Ms. Kathryn H. Davis
City Attorney
City of Killeen
P. O. Box 1329
Killeen, Texas 76540-1329

OR2005-10406

Dear Ms. Davis:

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# 236498.

The City of Killeen (the "city") received a request for the "Stillforest Subdivision 2nd Extension Plat Autocad file." Although you raise section 552.110 of the Government Code, you make no arguments as to whether the requested information is excepted from disclosure under this or any other exception.¹ However, you indicate that this information may be subject to the third party proprietary interests of Mitchell & Associates, Inc. ("Mitchell"). You indicate that pursuant to section 552.305 of the Government Code, you notified Mitchell of the request and of its opportunity to submit comments to this office. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 submitted information and the comments submitted by Mitchell.

¹We also note your statement that "the City asserts that the contents of the sponsorship agreement are excepted from public disclosure." However, it does not appear that the requestor has requested any such agreement, nor have you submitted an agreement for our review as responsive to the request. Thus, our ruling does not address the public availability of the agreement at issue.

Mitchell argues the requested information is excepted from disclosure because the city agreed to maintain the confidentiality of this information. However, information is not confidential under the Act simply because the party submitting the information to a governmental body anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”); 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the requested information falls within an exception to disclosure, it must be released, notwithstanding any expectations or agreement specifying otherwise.

We understand Mitchell to further argue that the requested information is excepted from disclosure pursuant to section 552.110(b) of the Government Code. Section 552.110(b) excepts from disclosure “[c]ommercial 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.” Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999).

Mitchell claims “the format and presentation of the file in question is proprietary” and states it “has incurred great expense in developing [design] standards that are proprietary to [Mitchell].” Mitchell asserts that the requestor’s company “has already benefitted from sheet styles and title blocks that were laboriously produced by” Mitchell, which were “illicitly obtained.” Mitchell further claims the requested information is “modifiable when released in Autocad format” as requested, and that the release of this information in a modifiable format exposes Mitchell to professional liabilities. Upon review of Mitchell’s arguments and the submitted information, we find that Mitchell has demonstrated that release of the requested information, the Autocad file in question, would cause the company substantial competitive harm. Accordingly, the requested information must be withheld pursuant to section 552.110(b) of the Government Code.

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 Office of the Attorney General 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. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 236498

Enc. Submitted documents

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