



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2006

Mr. George Staples
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2006-01206

Dear Mr. Staples:

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# 242127.

The City of North Richland Hills (the "city"), which you represent, received a request for information related to the North Hills Mall. You claim that the requested information is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 generally alleges that release of a portion of the submitted information would cause substantial competitive harm to third party G&K Management Company, Inc. ("G&K"), the city has not demonstrated that this information is either protected trade secret information or commercial or financial information of a business prospect. Furthermore, G&K has not submitted any arguments to this office explaining the applicability of section 552.131(a) to the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise or governmental body must show by specific

factual evidence that release of information would cause it substantial competitive harm). Therefore, we find that you have not demonstrated the applicability of section 552.131(a) to the submitted information, and it may not be withheld on that basis.

Section 552.131(b) of the Government 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 inform us that the submitted information relates to pending economic development negotiations involving the city and G&K. You also indicate that the submitted information includes information concerning possible financial or other incentives being offered to G&K. Upon review of your arguments and the submitted information, we conclude that the city 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 city finalizes an agreement with the business prospect. *See id.* § 552.131(c). However, we find you have not sufficiently demonstrated how the remaining information consists of a financial or other incentive for purposes of section 552.131(b). Therefore, we conclude that the remaining information is not excepted from disclosure under section 552.131(b), and it must be released.

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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 242127

Enc. Submitted documents

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