



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2006

Ms. Angela M. DeLuca
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842

OR2006-01596

Dear Ms. DeLuca:

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# 242674.

The City of College Station (the "city") received a request for information relating to septic tank pumping at a specific residence in the city. You make no arguments and take no position as to whether the submitted information is excepted from disclosure. You indicate that the submitted information may be subject to third party proprietary interests. Pursuant to section 552.305 of the Government Code, you state you have notified Carroll Septic Tank Service and Texas Organic Recovery of the request and of their right to submit arguments to this office as to why the information should not be released. *See Gov't Code § 552.305(d); 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 under Act in certain circumstances). We have reviewed the submitted information.

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. *See Gov't Code § 552.305(d)(2)(B)*. As of the date of this letter, this office has not received comments from Carroll Septic Tank Service or Texas Organic Recovery explaining how the release of the submitted information will affect their proprietary interests. Thus, we have no basis to

conclude that the release of any portion of the submitted information would implicate the proprietary interests of these entities. *See* 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 none of the submitted information may be withheld based on the proprietary interest of Carroll Septic Tank Service or Texas Organic Recovery.

However, we note that the submitted information contains Texas license plate numbers that are confidential under section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information that relates to a Texas motor vehicle title or registration. The city must withhold the Texas license plate numbers we have marked under section 552.130. The remaining information 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

¹The Office of the Attorney General will raise mandatory exceptions like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Matthew T. McLain
Assistant Attorney General
Open Records Division

MM/jh

Ref: ID# 242674

Enc. Submitted documents

c: Mr. George Engelbretson
5077 Raymond Stotzer Parkway
College Station, Texas 77845
(w/o enclosures)

Carroll Septic Tank Service
PO Box 1105
Caldwell, Texas 77836
(w/o enclosures)

Mr. D. Hurst
Waste Water Treatment Plant #2
City of Hearne
210 Cedar
Hearne, Texas 77859
(w/o enclosures)

c: Mr. Charles Rhodes
City of Bryan
Burton Creek Waste Water
Treatment Plant
300 Park Road
Bryan, Texas 77801
(w/o enclosures)

Mr. Syed Hyder
Texas Organic Recovery
7101 Highway 290 West, Suite 325
Austin, Texas 78736
(w/o enclosures)