



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 21, 2006

Ms. Wendy E. Ogden  
Assistant City Attorney  
City of Corpus Christi  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2006-06482

Dear Ms. Ogden:

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# 252184.

The City of Corpus Christi (the "city") received a request for information relating to (1) bacteria levels, (2) city council ethical standards, and (3) pending proposals for development at a specified location. You state that most of the requested information will be released. Although you state that the remaining information may be excepted from disclosure under sections 552.101, 552.110, 552.113, and 552.131 of the Government Code, you make no arguments regarding these exceptions. However, you believe that this information may implicate the proprietary interests of the following third-parties: Zohouri Development ("Zohouri") and Dougherty & Chavez Architects ("Dougherty"). Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305(d) of the Government Code, you notified the interested third parties of the city's receipt of the requests and of their right to submit arguments to us as to why any portion of the submitted 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 the Act in certain circumstances). We have reviewed the submitted information.

Initially, we note that you did not submit information responsive to parts 1 or 2 of the request for our review. *See Gov't Code § 552.301(e)(1)(D)*. As you have not submitted this information, we assume the city has released it to the extent it existed on the date the city received this request. If not, the city must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also* Open Records Decision No. 664 (2000) (noting that if

governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We next 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 it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither Zohouri nor Dougherty has submitted to this office any reasons explaining why the requested information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes Zohouri's or Dougherty's proprietary information, and the city may not withhold any portion of the submitted information on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, 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), 542 at 3 (1990). As no other exceptions to disclosure are raised, the city must release the submitted information 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 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,



Brian J. Rogers  
Assistant Attorney General  
Open Records Division

BJR/krl

Ref: ID# 252184

Enc. Submitted documents

c: Mr. John M. Kelley  
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