



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 18, 2007

Ms. Nicole B. Webster  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 78702-2570

OR2007-00617

Dear Ms. Webster:

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# 269187.

The City of Waco (the "city") received a request for information related to Tax Increment Financing applications submitted to the city over the last five years. The city takes no position on whether the submitted information is excepted from disclosure, but you state that release of this information may implicate the proprietary interests of LaSalle Plaza, ARC Abatement, Lake Brazos Steakhouse, LBS, and the Dwyer Group. Accordingly, you inform us, and provide documentation showing, that you notified these parties 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).

Initially, we note that the city failed to meet the ten-day deadline prescribed by section 552.301 of the Government Code in requesting a decision from this office. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. See Gov't Code § 552.301(b). You state that the city received the present

request for information on October 17, 2006. However, the city did not request a decision from this office until November 1, 2006. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Here, because third party interests are implicated, we will consider whether any of the submitted information must be withheld to protect third party interests.

Next, we note that an interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code 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 none of the notified third parties have submitted comments to this office explaining why any portion of the submitted information relating to them should not be released to the requestor. Thus, we have *no basis to conclude that the release of any portion of the submitted information relating to LaSalle Plaza, ARC Abatement, Lake Brazos Steakhouse, LBS, and the Dwyer Group would implicate their proprietary interests.* *See* Gov't Code § 552.110; Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 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). Accordingly, we conclude that the city may not withhold any portion of the submitted information based on the proprietary interests of these companies.

We note, however, that the submitted information includes a personal e-mail address. Section 552.137 of the Government Code states in part that "[e]xcept as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter." Gov't Code § 552.137(a). Section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the owner of the e-mail address has affirmatively consented to its public disclosure. *See id.* § 552.137(b). Section 552.137 is not applicable to an institutional e-mail address, an Internet website

address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Further, section 552.137(c) lists the types of e-mail addresses that may not be withheld under this exception. *See id.* § 552.137(c). Based on the information provided, it does not appear that the marked email address is of the type listed in section 552.137(c). *Id.* Thus, unless the owner has affirmatively consented to its public disclosure, the city must withhold the e-mail address we have marked under section 552.137. 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 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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/sdk

Ref: ID# 269187

Enc. Submitted documents

c: Mr. Jeffrey L. Rader  
8911 Whippoorwill Drive  
Waco, Texas 75712  
(w/o enclosures)

ARC Abatement  
Attn: Ron Daniel  
207 West Panther Way  
Hewitt, Texas 76643  
(w/o enclosures)

Mr. Robert Jimenez  
235 North Hewitt Drive, Suite 1  
Hewitt, Texas 76643  
(w/o enclosures)

Mr. Donald J. Dwyer, Jr.  
P.O. Box 3146  
Waco, Texas 76707  
(w/o enclosures)

Lake Brazos Steakhouse, LBS  
Attn: Shane and Kristina Morgan  
1620 North Lake Brazos Parkway  
Waco, Texas 76707  
(w/o enclosures)