



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 10, 2007

Mr. Matthew D. de Ferranti  
Bovey & Bojorquez, LLP  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2007-10281

Dear Mr. de Ferranti:

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# 287150.

The Brady Economic Development Corporation (the "corporation"), which you represent, received a request for information pertaining to the properties it bought from 2000-2007. The requestor also requests the properties' dispositions from January 2000 to May 2007. You claim that portions of the submitted information are excepted from disclosure under sections 552.110 and 552.117<sup>1</sup> of the Government Code.<sup>2</sup> You also state that release of this information may implicate the proprietary interests of Naomi Grimes ("Grimes"), Charlie Bradshaw ("Bradshaw"), Hemphill Industries ("Hemphill"), and Texas Aerocolor, Inc. ("Aerocolor"). Accordingly, you inform us, and provide documentation showing, that you notified these parties of the request and of the right of each to submit arguments to this office as to why its information should not be released. See Gov't Code § 552.305(d) (permitting

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<sup>1</sup>Although you claim section 552.131, your substantive argument and your markings are pursuant to section 552.117. Therefore, we will address section 552.117 for the marked information.

<sup>2</sup>Although you also raise sections 552.101, 552.103, 552.107, 552.111, and 552.131 of the Government Code, you have provided no arguments explaining how these exceptions are applicable to the submitted information. Therefore, we presume you no longer assert these exceptions to disclosure. Gov't Code §§ 552.301, .302.

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). We note, however, that the notice sent to the third parties is not the notice prescribed by our office.<sup>3</sup> In the future, the corporation should use the Attorney General's prescribed form, which is available at Appendix C of this office's Public Information Handbook and on the Attorney General's website at [www.oag.state.tx.us](http://www.oag.state.tx.us). We have reviewed the submitted arguments and the submitted information.

Initially, we address your obligations under section 552.301 of the Government Code. This section prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply

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<sup>3</sup>Section 552.305 provides in relevant part:

(D) . . . the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision. Notice under this subsection must:

...

(2) include:

...

(B) a statement, *in the form prescribed by the attorney general*, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:

(i) each reason the person has as to why the information should be withheld; and

(ii) a letter, memorandum, or brief in support of that reason.

Gov't Code § 552.305(d)(2)(B) (emphasis added).

to which parts of the documents. *Id.* § 552.301(e). You state that the corporation received the present request on May 30, 2007. However, you did not ask this office for a decision until June 14, 2007 and you did not submit the responsive information until June 21, 2007. Consequently, we find that the corporation failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, 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 section 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). Because section 552.117 and third party interests can provide compelling reasons to withhold information, we will address whether the submitted information is excepted under the Act.

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 information relating to that party should be withheld from public disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Grimes, Bradshaw, Hemphill, or Aerocolor explaining why their requested information should not be released. We thus have no basis for concluding that any portion of the requested information constitutes these parties' proprietary information protected under section 552.110, and none of it may be withheld on that basis. *See id.* § 552.110; *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).

Next, we address your claim under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Gov't Code* § 552.117(a)(1). We note that section 552.117 only applies to records that the governmental body holds in its capacity as an employer. *See id.* § 552.117 (providing that employees of governmental entities may protect certain personal information in the hands of their employer). In this instance, the information you have marked under section 552.117 does not pertain to records that the

corporation holds in its capacity as an employer. Thus, the information you have marked under section 552.117 may not be withheld on this basis.

We note that the information you have marked under section 552.117 may be excepted under section 552.1175 of the Government Code, which provides in part as follows:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

*Id.* § 552.1175(b).<sup>4</sup> We note that section 552.1175 does not except from disclosure the names of peace officers. We also note that an individual's personal post office box number is not a "home address" for purposes of section 552.1175, and therefore may not be withheld under section 552.1175. *See* Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home). You state that you are unsure whether the information you have marked pertains to peace officers. Thus, if the information we have marked pertains to a licensed peace officer who elected confidentiality in accordance with section 552.1175, then it must be withheld under section 552.1175. However, if this information does not pertain to a licensed peace officer, then it must be released.

In summary, the corporation must withhold the information we have marked under section 552.1175(b) if it pertains to a licensed peace officer who elected confidentiality. 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

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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).

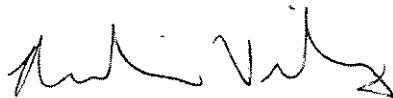
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jb

Ref: ID# 287150

Enc. Submitted documents

c: Mr. Joe D. Sanchez  
701 South Elm Street  
Brady, Texas 76825  
(w/o enclosures)