



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 27, 2007

Ms. Traci S. Briggs  
Deputy City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

OR2007-12592

Dear Ms. Briggs:

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# 291022.

The City of Killeen (the "city") received a request for specified building permits, inspection records, subdivision plans, and for correspondence related to the Rhaman subdivision. You state that some responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also believe that the submitted information implicates the proprietary interests of an interested third party, Mitchell & Associates, Inc. ("Mitchell"), and you have notified the company of the request for information and its opportunity to submit comments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We 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 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 decision, Mitchell has not submitted to this office any reasons explaining why its information should not be released. Therefore, Mitchell has not provided us with any basis to conclude that it has a protected proprietary

interest in any of the submitted information. *See, e.g.*, Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We now address the city's claims under section 552.110 of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). To establish that information is excepted from disclosure under section 552.110(b) a party must make a specific factual or evidentiary showing that substantial competitive injury would result from release of the information at issue. Conclusory or generalized allegations that disclosure will result in competitive harm will not suffice. Gov't Code § 552.110(b); *see also National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999).

The city states that "[b]ecause the subdivision is not completely built, another person could use this information as a shortcut for designing construction plans." Having reviewed the city's brief, we find that it has not supplied a specific factual or evidentiary showing that substantial competitive injury to Mitchell would likely result from releasing the company's information. Accordingly, none of the submitted information may be withheld under section 552.110 on the basis of the city's arguments. *See* Open Records Decision No. 509 at 5 (1988) (stating because costs, bid specifications, and circumstances will change for future contracts, argument that competitor could obtain unfair advantage on future contracts is entirely too speculative to serve as basis for withholding information). As the city makes no additional arguments against disclosure, the submitted information must be released 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/mcf

Ref: ID# 291022

Enc. Submitted documents

c: Mr. Brian K. Carroll  
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