



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2008

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla, Room 7BN
Dallas, Texas 75201

OR2008-07232

Dear Ms. Silver:

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# 311662.

The City of Dallas (the "city") received a request for all documents regarding the designation of the Tower Petroleum Building ("Tower Petroleum") as a city landmark and the application for and issuance of Historic Development Program tax abatement for this building. The request also seeks the application for and approval of the certificate of eligibility for a city property tax abatement issued by the Landmark Commission and the development agreement regarding Tower Petroleum. Although the city takes no position as to the disclosure of the information, you state that some of the requested information may contain proprietary information subject to exception under the Act. Accordingly, the city notified the Pillar Group ("Pillar") of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered Pillar's comments and reviewed the submitted information.

Pillar argues that the submitted information is excepted from disclosure pursuant to section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties by excepting from disclosure two types of information: 1) trade secrets and 2) commercial or financial information the release of which would cause a third party substantial competitive harm. Gov't Code § 552.110.

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). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue.¹ Gov’t Code § 552.110(b); *see also* 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).

Pillar seeks to withhold the design drawings labeled A-1 through A-8 and the information referred to as “financial information” under section 552.110(b) of the Government Code. We note, however, that Pillar does not object to the release of the remaining submitted information. Based on Pillar’s arguments and our review of the information at issue, we find that Pillar has sufficiently demonstrated that the information at issue constitutes commercial and financial information the release of which would cause Pillar substantial competitive harm. Therefore, we conclude that the city must withhold the design drawings labeled A-1 through A-8 and the four pages of financial information pursuant to section 552.110(b) of the Government Code.² The remaining 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

¹We note that in making its argument, Pillar quoted to the predecessor of section 552.110(b), which provided that commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision is excepted from public disclosure. Pillar then relied on Open Records Decision No. 639 (1996), wherein this office relied on *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), as a judicial decision and applied the standard set out in *National Parks* to determine whether information is excepted from public disclosure under the commercial and financial prong of section 552.110. However, the Third Court of Appeals held that *National Parks* is not a judicial decision within the meaning of section 552.110. *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex.App.—Austin 1999, no pet.). Subsequent to *Birnbaum*, section 552.110(b) was amended and the current exception does not require that the information be confidential by statute or judicial decision. Rather, as enacted, section 552.110(b) incorporated the substantial harm prong of the standard set out in *National Parks*.

²As our ruling is dispositive under section 552.110(b), we need not address Pillar’s remaining argument to disclosure.

governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

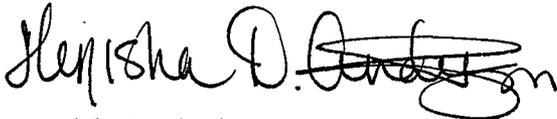
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Henisha D. Anderson
Assistant Attorney General
Open Records Division

HDA/mcf

Ref: ID# 311662

Enc. Submitted documents

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