



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 10, 2009

Mr. Joe Torres, III  
City Attorney  
City of Alice  
216 N. Texas Boulevard, Suite 2  
Alice, Texas 78332

OR2009-01746

Dear Mr. Torres:

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# 335330.

The City of Alice (the "city"), which you represent, received a request for all information concerning the construction of a specific apartment complex. You state that the city will release some of the requested information. You state that the city objects to disclosure of the remaining requested information because it may implicate the proprietary interests of Cameron Village, Ltd., Patlan Multihousing Group, Inc., and Simpson Housing Solutions, L.L.C. (collectively the "third parties"). Accordingly, you state you have notified the third parties of this request and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered your arguments.

Initially, we must address the city's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving a 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 to which parts of the documents. *See* Gov't Code § 552.301(e). As of the date of this letter, you have not submitted a copy of the specific information requested. We therefore find that the city failed to comply with the procedural requirements of section 552.301 in requesting a ruling from this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). The proprietary interests of a private party can provide a compelling reason to withhold information. We note, however, 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 that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B).

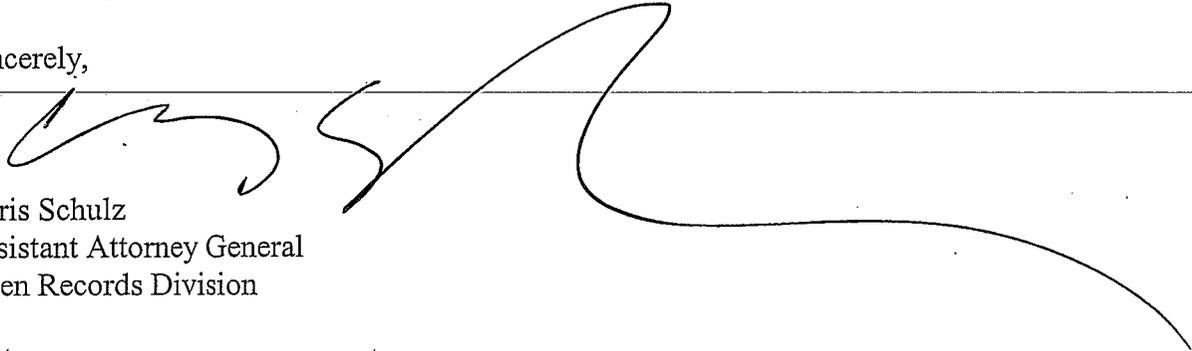
As of the date of this letter, this office has not received comments from the third parties explaining how the release of the requested information will affect their proprietary interests. Thus, the third parties have not demonstrated that any of the requested information is proprietary for purposes of the Act. *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. In addition, because you have not submitted any of the responsive information, we have no basis for finding it confidential. Thus, we have no choice but to order the requested information released pursuant to section 552.302 of the Government Code. If you believe the requested information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 335330

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)