



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2009

Ms. Anita Burgess
City Attorney
City of Denton
215 East McKinney
Denton, Texas 76201

OR2009-05458

Dear Ms. Burgess:

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# 340826.

The City of Denton (the "city") received a request for memorandums sent by the city manager to the city council in January of 2009.¹ You state that the city is providing most of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.110 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The city asserts that the submitted information is excepted from disclosure under section 552.110(b) of the Government Code because the information at issue "discusses ongoing contract negotiations" and its release would "cause substantial harm to the [c]ity by providing the public crucial insight into the legal strategies and risk tolerance of the [c]ity." 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

¹We note the requestor has excluded from his request "memorandums from the city attorney's office that would fall under the exemptions of the [Act]." Accordingly, any such information is not responsive to the present request. The city need not release non-responsive information and this ruling will not address it.

showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); Open Records Decision No. 661 (1999). By its terms, section 552.110(b) only protects the interests of the person from whom the information was obtained. This section does not protect the interests of the governmental body that receives proprietary information nor does it allow a governmental body to assert section 552.110 for information it creates. We note that the information at issue was not obtained from a third party, but rather is a communication from the city mayor to the city council. Upon review, we find that the city has failed to establish the applicability of section 552.110(b). Therefore, no part of the information at issue may be withheld pursuant to section 552.110(b).

The city raises section 552.131(a)(2) of the Government Code for the same information which it asserts section 552.110(b). Section 552.131 relates to economic development information and provides in part the following:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

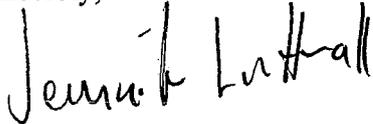
(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

Gov't Code § 552.131(a)(2). Section 552.131(a), in part, excepts from disclosure "commercial 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." *Id.* This aspect of section 552.131 is co-extensive with section 552.110(b) of the Government Code. *See id.* § 552.110(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). As previously mentioned, the information at issue was not obtained from a third party. Because you have not established the applicability of section 552.110(b), we conclude that none of the information at issue may be withheld pursuant to section 552.131(a)(2). As you have raised no further exceptions to disclosure, the submitted information must be released.

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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 340826

Enc. Submitted documents

c: Requestor
(w/o enclosures)