



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2009

Ms. Eileen McPhee
Carls, McDonald & Dalrymple, L.L.P
Barton Oaks Plaza 2
901 South Mopac Expressway, Suite 500
Austin, Texas 78746

OR2009-15147

Dear Ms. McPhee:

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# 359515 (CMcd # 2134).

The City of Georgetown (the "city"), which you represent, received a request for information pertaining to new construction near two specified locations. You take no position with respect to the public availability of the submitted information, but believe that the request may implicate the proprietary interests of interested third parties. Accordingly, you notified these companies of this request for information and of their right to submit arguments to this office as to why the information should not be released.¹ 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

¹The companies that received notice pursuant to section 552.305 are the following: Chatsworth Products Inc.; San Gabriel Presbyterian Church; Georgetown Rail Equipment Co.; KB Home Lone Star LP; XL Speciality Insurance Co.; PLN Centres, Ltd.; Centres Southwest Inc.; and PMSV Georgetown LP.

of exception in the Act in certain circumstances). We have reviewed the submitted information.²

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 letter, we have not received comments from any of the notified third parties explaining why their information should not be released. Therefore, we have no basis to conclude that any of the third parties has a protected proprietary interest in the submitted information. *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. Accordingly, the city may not withhold any portion of the submitted information based upon the proprietary interests of the third parties. As no exceptions to disclosure have been raised, the city must release the submitted information to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Ref: ID# 359515

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Charles Bauman
Mr. Gene Newton
San Gabriel Presbyterian Church
5404 Williams Drive
Georgetown, Texas 78633
(w/o enclosures)

Mr. Mark Currey
Mr. David Currey
PLN Centers, Ltd
904 Bluebonnet
Austin, Texas 78704
(w/o enclosures)

Mr. Mark Currey
Mr. David Currey
Centers Southwest LLC
904 Bluebonnet
Austin, Texas 78704
(w/o enclosures)

Private Mini Storage
PMSV Georgetown LP
10575 West Office Drive
Houston, Texas 77042
(w/o enclosures)

Eckerds at Cedar Breaks
XL Specialty Insurance Company
25 Independence Boulevard
Warren, New Jersey 07059
(w/o enclosures)

Wood Lake Supervision
KB Home Lone Star LP
11911 Burnet Road
Austin, Texas 78758
(w/o enclosures)

Inner Loop Commercial Park
Georgetown Rail Epqt Co
101 Cooperative Way
Georgetown, Texas 78626
(w/o enclosures)