



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2011

Mr. T. Daniel Santee II
Interim City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2011-00288

Dear Mr. Santee:

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# 405333.

The City of Abilene (the "city") received a request for the city's Reservoir System Operations Plan. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Freese and Nichols, Inc. Consulting Engineers ("Freese"). Accordingly, you state, and provide documentation showing, you notified Freese of the request for information and of its right to submit arguments to this office as to why the submitted 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 the exception you claim and reviewed the submitted information.

You raise section 552.101 of the Government Code for the submitted information. Section 552.101 excepts from disclosure "information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, you have not pointed to any statutory confidentiality provision, nor are we aware of any, that would make any of the submitted information confidential under section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4

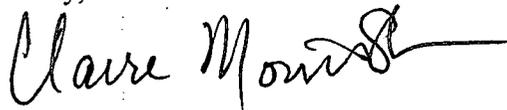
(1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code.

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 Freese explaining why the submitted information should not be released. We note you assert the submitted information is excepted under section 552.110 of the Government Code. However, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address your arguments under section 552.110. Because we have not received comments from Freese, we have no basis to conclude Freese 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 the submitted information on the basis of any proprietary interest Freese may have in the information. Therefore, 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, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/vb

Ref: ID# 405333

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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