



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2013

Ms. Patrice Fogarty
City Secretary
Office of the City Secretary
City of La Porte
604 West Fairmont Parkway
La Porte, Texas 77571

OR2013-05847

Dear Ms. Fogarty:

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# 483799.

The City of La Porte (the "city") received a request for any records regarding new home construction at a specified address, including files on organizations, government policies, or records of government action such as plot plans, elevation certificates, permits, construction bonds, street repair bonds, pile driving requirements, special bonds or insurance, special exceptions, and approvals in the past seven years. The request also seeks information regarding political connections, favors, or personal relationships with the owners of the property at the specified address. Although you take no position as to whether the requested information is excepted under the Act, you state release of this information may implicate the proprietary interests of a third party. Accordingly, you state, and provide documentation showing, you notified PE Square Engineering Consultants, L.L.C. ("PE") 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 received comments from PE. We have considered the submitted comments and reviewed the submitted information.

Initially, we note you have only submitted the engineer-sealed plans for the specified address. Thus, to the extent any other responsive information existed and was maintained by the city

when it received the present request, we assume the city has released any such information. If not, then the city must do so immediately.¹ See Gov't Code §§.552.301, .302; Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

We note 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). Although we received comments from PE, PE did not raise any exceptions to disclosure or assert it had a protected proprietary interest in the submitted information. Therefore, we have no basis to conclude PE 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 of the submitted information on the basis of any proprietary interest PE may have in it. As no exceptions to disclosure have been raised, 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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

¹We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Ref: ID# 483799

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Ricardo A. David
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(w/o enclosures)