



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 18, 2013

Mr. Jeffrey T. Pender  
Deputy General Counsel  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

OR2013-06345

Dear Mr. Pender:

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# 485388.

The Texas Department of Housing and Community Affairs (the "department") received a request for information pertaining to three specified applications. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of the submitted information may implicate the proprietary interests of City Wide Serenity Place Apartment, L.P. ("Serenity"). Accordingly, you state the department has notified Serenity of the request for information and of its right to submit arguments to this office as to why its 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 Act in certain circumstances). We have reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the portions of the request for two of the specified applications. Thus, to the extent any information responsive to these portions of the request existed when the request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Serenity explaining why the submitted information should not be released. Therefore, we have no basis to conclude

Serenity 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 department may not withhold any of Serenity's information on the basis of any proprietary interests it may have in the information.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).<sup>1</sup> Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address affirmatively consents to its release. As no further exceptions to disclosure have been raised, the department must release the remaining information.

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, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 485388

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Sherman Roberts  
Serenity Place Apartments  
3214 Denley  
Dallas, Texas 75216  
(w/o enclosures)