



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2014

Mr. Matthew C. G. Boyle
Counsel for the Town of Argyle
Boyle & Lowry, L.L.P.
4201 Wingren Drive, Suite 108
Irving, Texas 75062-2763

OR2014-04651

Dear Mr. Boyle:

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# 517339.

The Town of Argyle (the "town"), which you represent, received a request for twenty-four categories of information regarding communications between specified entities pertaining to developments of two specified properties over a specified time period, communications between specified entities regarding a specified plan, the interest that specified individuals owned in specified entities, all disclosure of substantial interest forms in relation to specified entities or specified properties, records pertaining to zoning regulations put in place regarding specified properties and plans, all developments in discussion by the town, the zoning ordinance of the town, and a specified development plan that the town has undertaken.¹ You state you have released some information to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹You state the town sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Section 552.131 of the Government Code provides as follows:

(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:

(1) a trade secret of the business prospect; or

(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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a), (b). Section 552.131(a) only protects the proprietary interests of third parties that have provided information to governmental bodies, not the interests of governmental bodies themselves. In this instance, there has been no demonstration by a third party that any of the information at issue constitutes a trade secret or that release of any of the information at issue would cause a third party substantial competitive harm. *See generally* Open Records Decision Nos.661 at 5–6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm), 552 at 5 (1990) (attorney general will accept private person's claim under section 552.110(a) if person establishes *prima facie* case for trade secret exception, and no one submits argument that rebuts claim as matter of law). We therefore conclude that the town may not withhold any of the information at issue under section 552.131(a) of the Government Code.

Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. You state the town has been negotiating with a business prospect which is seeking to locate a development within the town. You further state the submitted information consists of communications between the town and the business prospect regarding proposed financial and other incentives to be provided by the town. You state this information is being used to facilitate the discussion between the town and the business prospect, but no final agreement has been reached. Based on these representations and our review, we agree the town may withhold the information we marked in the submitted information under section 552.131(b) of the

Government Code. However, we find you have not demonstrated how any of the remaining information at issue consists of information about a financial or other incentive being offered to a business prospect by the town. Consequently, the town may not withhold any of the remaining information under section 552.131(b) of the Government Code. As you raise no further exceptions to disclosure, the remaining 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/eb

Ref: ID# 517339

Enc. Submitted documents

c: Requestor
(w/o enclosures)