



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 16, 2014

Mr. Albert D. Hammack
Town Attorney
Town of Highland Park
4700 Drexel Drive
Highland Park, Texas 75205

OR2014-06296

Dear Mr. Hammack:

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# 519719.

The Town of Highland Park (the "town") received a request for information regarding a specified building permit. You state the town will release some information to the requestor. You state the town will redact e-mail addresses of members of the public subject to section 552.137 of the Government Code.¹ Although you take no position as to whether the submitted 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 D.C. Broadstone II, Architect ("D.C. Broadstone") 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 arguments from an attorney for D.C. Broadstone, as well as arguments from an attorney for another interested

¹We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

party. *See* Gov't Code § 552.304 (interested third party may submit written comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

D.C. Broadstone contends its information is excepted under section 552.110 of the Government Code, which protects (1) trade secrets, and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See id.* § 552.110(a), (b). Section 552.110(b) protects “[c]ommercial 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[.]” Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 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).

D.C. Broadstone contends its submitted building plans constitute commercial or financial information, the release of which would cause the company substantial competitive harm. D.C. Broadstone states that the building plans “contain numerous architectural and design elements that D.C. Broadstone has expended considerable time and resources developing” and those elements “are not known outside of the firm by any individuals other than D.C. Broadstone’s clients, who have paid a premium for D.C. Broadstone’s design services.” D.C. Broadstone further states that release of the submitted building plans would allow competitors to “appropriate D.C. Broadstone’s unique design elements” and benefit from “D.C. Broadstone’s experience and expenditure of effort and resources.” Additionally, D.C. Broadstone contends that it could lose business if potential clients were able to obtain D.C. Broadstone’s building plans and “hire a less expensive contractor to incorporate design elements developed by D.C. Broadstone.” Upon review, we find that D.C. Broadstone has established that its building plans constitute commercial or financial information, the release of which would cause D.C. Broadstone substantial competitive harm. Therefore, the town must withhold the submitted information under section 552.110(b) of the Government Code.²

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.

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/tch

Ref: ID# 519719

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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