



ATTORNEY GENERAL OF TEXAS
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April 28, 2014

Mr. John D. Bell
Counsel for the Corpus Christi Regional Economic Development Corporation
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OR2014-06964

Dear Mr. Bell:

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# 520864.

The Corpus Christi Regional Economic Development Corporation (the "corporation"), which you represent, received a request for copies of all applications seeking or requesting economic incentives since a specified date. You state you have released some of the information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.131 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Ingleside Ethylene, LLC ("Ingleside"), CMS2 Development Co. ("CMS"), Patriot Wind Farm, LLC ("Patriot"), and Trafigura AG ("Trafigura"). Accordingly, you state, and provide documentation showing, you notified Ingleside, CMS, Patriot, and Trafigura of the request for information and of their rights 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 Ingleside and Patriot. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor specifically excluded from his request the information found in Section 2.3 of the submitted applications, which asks the applicants to fully describe the

proposed project, including capital improvements to be undertaken, the facility's use, and the product or service to be produced. Thus, this information, which we have marked, is not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the corporation is not required to release that information in response to the request.

Next, the corporation asserts the submitted responsive information should be withheld because the companies expected confidentiality when the information was submitted to the corporation. Information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Next, 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 ruling, we have not received comments from CMS or Trafigura. Thus, we have no basis to conclude either CMS or Trafigura has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 corporation may not withhold any of the submitted information on the basis of any proprietary interest CMS or Trafigura may have in the information.

The corporation, Ingleside, and Patriot raise section 552.101 of the Government Code in conjunction with section 312.003 of the Tax Code for the submitted responsive information. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses other statutes that make information confidential. Section 312.003 of the Tax Code, entitled “Confidentiality of Proprietary Information,” provides:

Information that is provided to a taxing unit in connection with an application or request for tax abatement under [the Property Redevelopment and Tax

Abatement Act] and that describes the specific processes or business activities to be conducted or the equipment of other property to be located on the property for which tax abatement is sought is confidential and not subject to public disclosure until the tax abatement agreement is executed. That information in the custody of a taxing unit after the agreement is executed is not confidential under this section.

Tax Code § 312.003. Section 312.003 makes confidential only information that describes the specific processes or business activities to be conducted or the equipment or other property to be located on the property. *See id.* Thus, we do not construe section 312.003 to protect from public disclosure all records pertaining to applications or pending requests for tax abatements, but rather only those portions of the records that implicate the business's proprietary interests. Even if the corporation is construed to be a taxing unit, which we need not decide here, we find you have failed to demonstrate how the responsive information implicates a business's proprietary interests for the purposes of section 312.003. Accordingly, the corporation may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with section 312.003 of the Tax Code.

Patriot raises section 552.104 of the Government Code, which excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. Section 552.104, however, is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See* Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body in competitive bidding situation, and not interests of private parties submitting information to government), 522 (1989) (discretionary exceptions generally). As the corporation does not argue section 552.104, we conclude none of the submitted responsive information may be withheld under section 552.104 of the Government Code. *See* ORD 592 (governmental body may waive section 552.104).

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* ORD No. 661 at 5.

Ingleside argues its information consists of commercial or financial information, the release of which would cause the company substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Ingleside has failed to demonstrate the release of its information would cause the company substantial competitive injury. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial

information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the corporation may not withhold any of Ingleside's responsive information under section 552.110(b) of the Government Code.

The corporation, Ingleside, and Patriot raise section 552.131 of the Government Code. Section 552.131 relates to economic development information and provides, in part:

(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) protects the proprietary interests of third parties that have provided information to governmental bodies, not the interests of governmental bodies themselves. Therefore, we do not address the corporation's arguments under section 552.131(a). Section 552.131(a) excepts from disclosure only "trade secret[s] of [a] business prospect" and "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." *Id.* This aspect of section 552.131 is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b). Because we have already disposed of Ingleside's claims under section 552.110, the corporation may not withhold any of Ingleside's responsive information under section 552.131(a) of the Government Code.

Further, we find Patriot has failed to demonstrate that any of its responsive information constitutes a trade secret or that release would cause Patriot substantial competitive harm. *See* ORDs 552 at 5 (attorney general will accept private person's claim under section 552.110(a) of the Government Code if person establishes *prima facie* case for trade secret exception, and no one submits argument that rebuts claim as matter of law), 661 at 5-6. Thus, the corporation may not withhold any of Patriot's responsive information under section 552.131(a) of the Government Code. Additionally, we note section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the corporation does not assert section 552.131(b) as an exception to disclosure, we conclude no portion of the submitted responsive information is excepted under section 552.131(b) of the Government Code. As no further exceptions to disclosure are raised, the corporation must release the responsive 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.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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 520864

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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