



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 9, 2015

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2015-04531

Dear Ms. Pemberton:

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# 555948 (Ref. No. W015047).

The City of Killeen (the "city") received a request for (1) any open zoning, building, or fire code violations, (2) variance, special use, or conditional use permits, (3) certificates of occupancy, and (4) the approved final draft site plan for the Summerlyn Apartments located at a specified address. You state the city has provided some of the requested information to the requestor. Although we understand the city takes no position with respect to the public availability of the remaining requested information, you state release of this information may implicate the proprietary interests of Mitchell & Associates, Inc. ("Mitchell"). Accordingly, you state, and provide documentation showing, the city notified Mitchell of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have reviewed the submitted information.

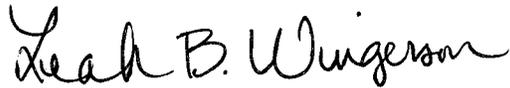
We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Mitchell explaining why the submitted information should not be

released. Therefore, we have no basis to conclude Mitchell has protected proprietary interests 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 the submitted information on the basis of any proprietary interests Mitchell may have in the information. As no exceptions to disclosure have been raised, the city must release the submitted 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 555948

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Robert E. Mitchell
Mitchell & Associates
102 North College Street
Killeen, Texas 76541
(w/o enclosures)