



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 6, 2015

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

OR2015-08846

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# 562458 (Killeen Ref. No. W015542).

The City of Killeen (the "city") received a request for: (1) an example water quality management agreement packet for a similar commercial site with a UDA involving more than two parties, (2) the Elms Road construction plans, drainage study, and HEC model, (3) an example waiver of liability, (4) historical contour data of the site from 1980 until the date of the request, and (5) historical GIS data from the site from 1980 until the date of the request. You state you have released a portion of the information to the requestor. Although you take no position as to whether the requested information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of Jay Manning Homes, Mitchell & Associates, Inc., and Freese & Nichols. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the requested 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 reviewed the submitted information.

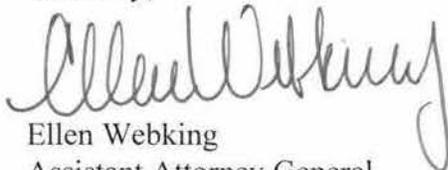
An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As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

interested third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the third parties have a protected proprietary interest in the requested 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 the third parties may have in the information. As no exceptions to disclosure have been raised, the submitted 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 562458

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Jay Manning
Jay Manning Homes
2425 East US 190
Copperas Cove, Texas 76522
(w/o enclosures)

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

Mr. Sean D. Berry
Freese & Nichols
10431 Morado, Suite 300
Austin, Texas 78759
(w/o enclosures)