



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 17, 2015

Ms. Julia Benitez Sullivan
Director, Public Affairs Division
Hidalgo County
302 West University Drive
Edinburg, Texas 78539

OR2015-17027

Dear Ms. Sullivan:

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# 575628 (Hidalgo County File No. 2015-251).

Hidalgo County (the "county") received a request for all documents related to the Hidalgo County Master Drainage System Phase II sent or received from a specified individual for a specified time period. You indicate you have released some information with certain information redacted pursuant to sections 552.024 and 552.130 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 R. Gutierrez Engineering Corporation ("RGEC"). Accordingly, you state, and provide documentation showing, you notified RGEC of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory

¹Section 552.024 of the Government Code authorizes a governmental body to redact from public release a current or former employee's home address and telephone number, emergency contact information, social security number, and family member information excepted from disclosure under section 552.117 of the Government Code without the necessity of requesting a decision from this office under the Act, if the current or former employee or official timely elected to withhold such information. *See Gov't Code* §§ 552.024(a)-(c), .117. Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *Id.* § 552.130(c).

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 considered the submitted arguments and reviewed the submitted information.

Initially, 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) 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 RGEC. Therefore, we have no basis to conclude RGEC has a protected proprietary interest 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 county may not withhold any of the submitted information on the basis of any proprietary interests RGEC may have in the information.

We note some of the submitted information may be subject to section 552.137 of the Government Code.² Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not one of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the county must withhold the e-mail address we have marked under section 552.137 unless the owner of the address affirmatively consents to its release. As no other exception to disclosure has been raised, 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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mili Gosar', with a long horizontal flourish extending to the right.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 575628

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Ramiro Gutierrez
R. Gutierrez Engineering Corporation
130 East Park Avenue
Pharr, Texas 78577
(w/o enclosures)