



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 5, 2015

Mr. William P. Chesser  
City Attorney  
City of Albany  
P.O. Box 983  
Brownwood, Texas 76804

OR2015-20831

Dear Mr. Chesser:

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# 582381.

The City of Albany (the "city"), which you represent, received a request for (1) all documents and e-mails related to Wal-Mart Stores, Inc.'s ("Wal-Mart") plans to build a local express store in 2014, annexation of land where such store was to be located, and extension of the city's extraterritorial jurisdiction; and (2) all documents created during a specified time frame related to any proposed development along a specified route.<sup>1</sup> You state the city has released some responsive information. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.131 of the Government Code. You also state release of this information may implicate the proprietary interests of Wal-Mart. Accordingly, you state, and provide documentation showing, you notified Wal-Mart 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

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<sup>1</sup>We note the city sought clarification of the request, in response to which the requestor narrowed the request to exclude information protected by the attorney-client privilege. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Although the city raises section 552.110 of the Government Code for the submitted information, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the city's argument under section 552.110. We further 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 Wal-Mart explaining why its information should not be released. Therefore, we have no basis to conclude Wal-Mart 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 city may not withhold any of the information at issue on the basis of any proprietary interest Wal-Mart may have in it.

Section 552.131 of the Government Code 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. There has been no demonstration by Wal-Mart that any of the information at issue constitutes a trade secret or that release of any of the information

at issue would cause the company substantial competitive harm. *See* ORDs 661 at 5-6, 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). Thus, the city may not withhold any of the information at issue under section 552.131(a) of the Government Code.

Section 552.131 (b) of the Government Code protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. Gov't Code § 552.131(b). The submitted information relates to negotiations between the city and Wal-Mart concerning the construction of a Wal-Mart store. However, upon review, we find you have not demonstrated how any of the information at issue consists of information about a financial or other incentive being offered to a business prospect. Consequently, none of the submitted information may be withheld under section 552.131(b) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code.<sup>2</sup> *See* Gov't Code § 552.117(a)(1). We note that section 552.117 encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cell phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Therefore, to the extent the individuals whose information we have marked timely requested confidentiality under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the city may not withhold the cellular telephone numbers we have marked if a governmental body pays for the individuals' cell phone services. If the individuals whose information we have marked did not timely request confidentiality under section 552.024, then the city may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with

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

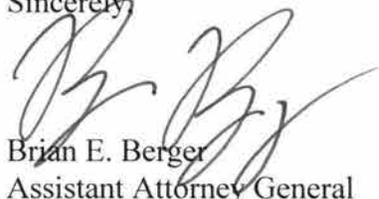
a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). We note section 552.137(c) provides section 552.137(a) does not apply to an e-mail address provided to a governmental body by a person who has or seeks a contractual relationship with the governmental body or by the contractor’s agent. *Id.* § 552.137(c)(1)-(2). The e-mail addresses at issue are not of a type excluded by subsection (c). Therefore, the city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, to the extent the individuals whose information we have marked timely requested confidentiality under section 552.024, the city must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the city may not withhold the cellular telephone numbers we have marked if a governmental body pays for the individuals’ cell phone services. If the individuals whose information we have marked did not timely request confidentiality under section 552.024, then the city may not withhold the information we have marked under section 552.117(a)(1) of the Government Code. The city must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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](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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 582381

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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