



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 30, 2015

Ms. Charla Thomas
Deputy City Attorney
City of Temple
2 North Main Street, Suite 308
Temple, Texas 76501

OR2015-22816

Dear Ms. Thomas:

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# 585146.

The City of Temple (the "city") received a request for all documents submitted for a permit associated with a specified address. Although the city takes no position as to whether the requested information is excepted under the Act, it states release of the requested information may implicate the proprietary interests of Architectural Edge, Inc., Clark & Fuller, FHI, and Brandt Engineering. Accordingly, the city states, and provides documentation showing, it notified the 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).

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence

sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. Gov't Code § 552.301(e)(1). The city received the request for information on August 11, 2015. Because you do not inform this office the city was closed for business any of the days at issue, we find the city's fifteen-business-day deadline was September 1, 2015. As of the date of this letter, you have not submitted a copy or representative sample of the information requested. Consequently, we find the city failed to comply with the requirements of section 552.301.

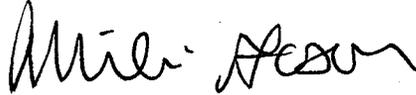
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). However, because third party interests are at stake, we will consider whether the requested information must be withheld to protect the interests of any third parties.

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 any of the third parties at issue explaining why their information should not be released. Therefore, we have no basis to conclude any of the third parties 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 the third parties may have in it and the requested information must be released. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 585146

c: Requestor

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