



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2015

Ms. Mary Ann Powell
Counsel for the City of Stafford
Olson & Olson, LLP
2727 Allen Parkway, Suite 600
Houston, Texas 77019-2133

OR2015-25006

Dear Ms. Powell:

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# 588708 (Ref Nos. COS15-054, COS15-055).

The City of Stafford (the "city"), which you represent, received two requests for information from the same requestor pertaining to the construction of a specified development. Although the city takes no position as to whether the submitted information is excepted under the Act, the city informs us release of this information may implicate the proprietary interests of Oasis Office Building, LTD.; ArchiTECH Design and Development, Inc.; SEi Companies; and Luxury Living Constructors, Inc. Accordingly, the city states, and provides documentation showing, it notified these third parties of the request for information and of their 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 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 the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for

information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The city states it received the requests for information on September 28, 2015. However, as of the date of this letter, the city has not submitted for our review a copy or representative sample of the information requested. Accordingly, we find the city failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630.

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. Gov't Code § 552.305(d)(2)(B). However, as of the date of this letter, we have not received comments from a third party explaining why its information should not be released. Therefore, we have no basis to conclude a third party has a protected proprietary interest in any of 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 requested information based upon the proprietary interests of any third parties. Thus, we have no choice but to order the city to release the requested information in accordance with section 552.302 of the Government Code. If you believe this 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 588708

c: Requestor

Oasis Office Building, LTD.
11123 Katy Freeway
Houston, Texas 77079

ArchiTECH Design & Development, Inc.
3040 Post Oak Boulevard, Suite 840
Houston, Texas 77056

SEi Companies
2424 Wilcrest Drive, Suite 200
Houston, Texas 77042

Luxury Living Constructors, Inc.
11123 Katy Freeway
Houston, Texas 77079