



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 16, 2016

Mr. Ryan D. Pittman  
Counsel for the City of Frisco  
Abernathy, Roeder, Boyd & Hullett, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2016-03657

Dear Mr. Pittman:

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# 598448.

The City of Frisco (the "city"), which you represent, received a request for structural, electrical, and plumbing plans for a specified address. You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code. You also state you notified Toll Bros., Inc. ("Toll Brothers"), and D&E Structures Consulting Engineers ("D&E") of the request for information and of their 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 in certain circumstances). We have received comments from Toll Brothers. We have considered the submitted arguments and 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 to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from D&E. Thus, we have no basis to conclude D&E has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 submitted information on the basis of any proprietary interest D&E may have in the information.

Although the city argues the submitted information is excepted under section 552.110 of the Government Code, 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. Toll Brothers claims portions of its information are excepted under section 552.110 of the Government Code, which protects (1) trade secrets, and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110. Section 552.110(b) protects "[c]ommercial 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[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision 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).

Toll Brothers contends the information at issue is commercial or financial information, the release of which would cause substantial competitive harm to the company. Toll Brothers states the release of the information at issue would place Toll Brothers at a competitive disadvantage and allow competitors access to Toll Brothers' techniques and intellectual property. Upon review, we find Toll Brothers has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the city must withhold the submitted information under section 552.110(b) of the Government Code.<sup>1</sup>

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.

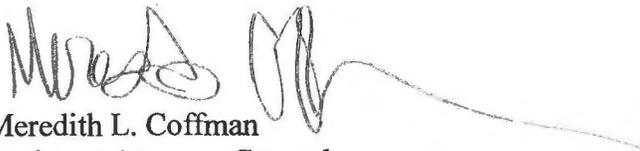
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

---

<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

[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,

  
Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 598448

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Toll Bros., Inc.  
c/o Mr. Brett M. Cornwell  
Nowak & Stauch, L.L.P.  
10000 North Central Expressway, Suite 1040  
Dallas, Texas 75231  
(w/o enclosures)

Mr. Steven L. Dickson  
D&E Structures Consulting Engineers  
1010 East Arapaho Road, Suite 106  
Richardson, Texas 75081  
(w/o enclosures)