



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 21, 2016

Ms. Criselda Palacios  
City Attorney  
City of Edinburg  
P.O. Box 1079  
Edinburg, Texas 78540

OR2016-25874

Dear Ms. Palacios:

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# 635055.

The City of Edinburg (the "city") received a request for all information pertaining to a specified agreement between the city and a named entity. You claim the submitted information is excepted from disclosure under section 552.131 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Doctors Hospital at Renaissance, Ltd. ("Doctors Hospital") and the Edinburg Economic Development Corporation ("EEDC"). Accordingly, you state, and provide documentation showing, you notified Doctors Hospital and EEDC 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 reviewed the submitted information and considered the submitted arguments.

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 Doctors Hospital or EEDC explaining why the submitted information should

not be released. Therefore, we have no basis to conclude Doctors Hospital or EEDC 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 the submitted information on the basis of any proprietary interest Doctors Hospital or EEDC may have in the information.

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) excepts from disclosure only "trade secret[s] of [a] business prospect" and "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." *Id.* § 552.131(a). This aspect of section 552.131 is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b); ORDs 661 at 5-6, 552 at 5. We note section 552.131(a) does not protect the interests of a governmental body regarding the release of information pertaining to economic development negotiations. Thus, we do not address your arguments under section 552.131(a) for the information at issue. Further, we have not received arguments from any third party explaining the submitted information contains the third party's trade secrets or its commercial or financial information. *See* Gov't Code § 552.305(d)(2)(B). Because no third party has demonstrated the information at issue

qualifies as a trade secret or release of the information at issue would result in substantial competitive harm, we conclude none of the information at issue may be withheld pursuant to section 552.131(a).

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. *See id.* § 552.131(b). We note the applicability of section 552.131 ends once the governmental body completes an agreement with the business prospect. *Id.* § 552.131(c). The city states the submitted information is related to a pending business project and negotiations with the company at issue are ongoing. Further, the documents reveal the city is in the process of negotiating an incentive agreement with the company at issue. Upon review, we find the city may withhold the information we have marked under section 552.131(b) of the Government Code. However, the remaining information pertains to a Texas Enterprise Zone Program agreement between the Office of the Governor, the city, and the company at issue that was completed before the city received the present request. Further, we find the remaining information does not reveal an incentive being offered by the city. Accordingly, the city may not withhold the remaining information under section 552.131(b).

The remaining information contains information that is subject to section 552.136 of the Government Code.<sup>1</sup> Section 552.136 provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Accordingly, the city must withhold the routing and bank account numbers we have marked under section 552.136 of the Government Code.

In summary, the city may withhold the information we have marked under section 552.131(b) of the Government Code. The city must withhold the routing and bank account numbers we have marked under section 552.136 of the Government Code. The city must release the remaining information.

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/>

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<sup>1</sup>The 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).

[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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/akg

Ref: ID# 635055

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)