



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 9, 2016

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

OR2016-27321

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# 637317.

The City of Edinburg (the "city") received a request for information regarding five specified addresses. You state the city has no information responsive to a portion of the request.<sup>1</sup> Although you take no position as to whether the requested information is excepted under the Act, you state release of this information may implicate the proprietary interests of specified third parties. Accordingly, you state, and provide documentation demonstrating, you notified Barrera Infrastructure Group, Inc.; GM Drafting Service; Sergio Rios ("Rios"); Rios Construye; Rogelio Almaguer; LDL Construction; and Jose D. Martinez 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

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

in certain circumstances). We have received comments from Rios.<sup>2</sup> We have reviewed the submitted information and 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 only received comments from Rios explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the other 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 the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

Rios raises section 552.113 of the Government Code. Section 552.113 provides, in relevant part, as follows:

(a) Information is excepted from [required public disclosure under the Act] if it is:

...

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

Gov't Code § 552.113(a)(2). In Open Records Decision No. 627 (1994), this office concluded section 552.113(a)(2) protects from public disclosure only (i) geological and geophysical information regarding the exploration or development of natural resources that is (ii) commercially valuable. ORD 627 at 3-4 (overruling rationale of Open Records Decision No. 504 (1988)). The decision explained the phrase "information regarding the exploration or development of natural resources" means "information indicating the presence or absence of natural resources in a particular location, as well as information indicating the extent of a particular deposit or accumulation." *Id.* at 4 n.4. However, section 552.113(a)(2) does not except general geological information about a particular location that is unrelated

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<sup>2</sup>Although Rios raises section 552.101 of the Government Code, Rios has not provided any arguments to support this exception. Therefore, we assume Rios has withdrawn the claim this section applies to the submitted information.

to the “presence or absence of natural resources.” In order to be commercially valuable for purposes of Open Records Decision No. 627 and section 552.113, information must not be publicly available. *See* Open Records Decision No. 669 (2000). Upon review, we conclude Rios has not demonstrated any portion of the submitted information is commercially valuable geological or geophysical information regarding the exploration of or development of natural resources. Accordingly, the city may not withhold any portion of the submitted information under section 552.113(a)(2) of the Government Code.

Rios also claims section 552.131 of the Government Code. Section 552.131 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:

...

(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)(2), (b). Upon review, we find Rios has not demonstrated release of any portion of the submitted information would cause substantial competitive harm. *See* Open Records Decision Nos. 661 at 5-6 (1999). Thus, the city may not withhold any portion of the submitted information under section 552.131(a)(2). Additionally, we note section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the city does not assert section 552.131(b) as an exception to disclosure, we conclude no portion of the submitted information is excepted under section 552.131(b) of the Government Code. The city must release the submitted 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/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,



Ian Lancaster  
Assistant Attorney General  
Open Records Division

IML/akg

Ref: ID# 637317

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

8 Third Parties  
(w/o enclosures)