



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 27, 2016

Ms. Marie N. Rovira
Counsel for the Town of Addison
Messer, Rockefeller & Fort, PLLC
6351 Preston Road, Suite 350
Frisco, Texas 75034

OR2016-28381

Dear Ms. Rovira:

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# 639422.

The Town of Addison (the "town"), which you represent, received a request for numerous categories of information pertaining to a specified Letter of Intent. Although the town has raised no exceptions to disclosure for the submitted information, the town informs us release of this information may implicate the proprietary interests of Western, LLC ("Western"). Accordingly, the town states it notified Western of the request for information and of its 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). We have considered the submitted arguments and reviewed the submitted information.

Initially, 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) of the Government Code 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 Western explaining why the submitted information should not be released. Therefore, we have no basis to conclude Western 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the town may not withhold the submitted information on the basis of any proprietary interest Western may have in the information.

Next, the town argues the submitted information is covered by a confidentiality clause with Western. We note information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to Gov’t Code § 552.110). Consequently, unless the information at issue comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary. As previously noted, the town has raised no exceptions to disclosure for the submitted information. The town 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, 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# 639422

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)