



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 27, 2016

Mr. Ryan D. Pittman
Counsel for the City of Frisco
Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75069

OR2016-28390

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# 639762.

The City of Frisco (the "city"), which you represent, received a request for information pertaining to a specified address. The city states it has released some information. 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 Burger Engineering, L.L.C. ("Burger"). Accordingly, the city states, and provides documentation showing, it notified Burger of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have reviewed the submitted information.

Initially, we note the submitted information may have been the subject of a previous request for information in response to which this office issued Open Records Letter No. 2016-14604 (2016). In Open Records Letter No. 2016-14604, we ruled the city must withhold the

submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. We have no indication the law, facts, and circumstances on which the prior ruling was based has changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter No. 2016-14604 as a previous determination and withhold the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, 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) 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 Burger explaining why the submitted information should not be released. Therefore, we have no basis to conclude Burger 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 city may not withhold the submitted information on the basis of any proprietary interest Burger may have in the information.

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter No. 2016-14604 as a previous determination and withhold the information at issue in accordance with that ruling. To the extent the submitted information is not identical to the information previously requested and ruled upon by this office, it must be released.

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# 639762

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)