



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 12, 2017

Mr. Micah King  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-1088

OR2017-00901

Dear Mr. King:

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# 641778 (PIR 30309, PIR 30732).

The City of Austin (the "city") received two requests from different requestors for information for a specified request for proposal. You state the city has released some of the requested information. 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 a third party.<sup>1</sup> Accordingly, you state you notified Great Lakes Recycling d/b/a Simple Recycling 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 received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have reviewed the submitted information.

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

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<sup>1</sup>We note the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office regarding one of the requests at issue. *See* Gov't Code § 552.301(e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider whether the submitted information is excepted from disclosure under the Act, notwithstanding the city's violation of section 552.301 in requesting this decision.

why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the third party explaining why its information should not be released. Therefore, we have no basis to conclude that the third party 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 any of the submitted information on the basis of any proprietary interest the third party may have in it. As no exceptions to disclosure have been raised, the submitted information 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](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,



Deborah M. Case  
Assistant Attorney General  
Open Records Division

DMC/eb

Ref: ID# 641778

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)