



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 17, 2017

Ms. Andrea D. Russell
Counsel for the Town of Flower Mound
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2017-03691

Dear Ms. Russell:

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# 646343.

The Town of Flower Mound (the "town"), which you represent, received a request for economic development incentives provided for the development of a specified address. The town states it will redact information pursuant to section 552.130 of the Government Code.¹ Although the town takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of KeHE Distributors ("KeHE") and Nature's Best ("NB"). Accordingly, you state, and provide documentation showing, you notified these third parties 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.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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 any third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any 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 town may not withhold the submitted information on the basis of any proprietary interest KeHE may have in the information. We note some of the submitted information is subject to section 552.136 of the Government Code.

Section 552.136 of the Government Code 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.”² Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the town must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code.

In summary, the town must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code. The town 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/>

²The town states it will redact information pursuant to Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information without requesting an attorney general decision. However, the Texas Legislature amended section 552.136 to allow a governmental body to redact information described in section 552.136(b) without a ruling from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor of his right to appeal the redactions in accordance with section 552.136(e). *See id.* § 552.136(e). Open Records Decision No. 684 does not permit the requestor to appeal such redactions. Thus, the statutory amendments to section 552.136 of the Government Code supercedes Open Records Decision No. 684, and a governmental body may redact information subject to section 552.136(b) in accordance with section 552.136(c), not Open Records Decision No. 684.

[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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 646343

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)