



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 6, 2017

Ms. Linda Pemberton
Paralegal
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2017-12408

Dear Ms. Pemberton:

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# 661335 (City PIR# W021913).

The City of Killeen (the "city") received a request for construction plans related to a specified address. Although you take 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 Big Red Dog Engineering and Consulting ("BRD").¹ Accordingly, you notified BRD of the request for information and of its right to submit arguments to this

¹Pursuant to section 552.303(c) of the Government Code, this office sent correspondence to the city on May 12, 2017 requesting you provide additional information necessary for this office to render a decision. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). Because the city did not respond to our request for additional information, we find the city failed to comply with section 552.303(d). However, because third party interests can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.303(d), we will consider whether the submitted information is excepted from disclosure under the Act, notwithstanding the city's violation of section 552.303(d). *See id.* § 552.303(e); *see also* Open Records Decision No. 150 at 2 (1977).

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.

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 not received comments from BRD explaining why the submitted information should not be released. Therefore, we have no basis to conclude BRD 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 BRD may have in it. As no exceptions to disclosure have been raised, 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, 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

Ref: ID# 661335

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)