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ATTORNEY GENERAL OF TEXAS

August 4, 2017

Mr. James Wimberley
Counsel for Nederland Economic Development Corporation
Law Offices of James Wimberley
P.O. Box 1786
Nederland, Texas 77627

OR2017-17640

Dear Mr. Wimberley:

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# 669628.

The Nederland Economic Development Corporation (the "NEDC"), which you represent, received a request for information pertaining to a named entity, including specified written contracts, correspondence, and e-mails. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.131 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the NEDC's procedural obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the NEDC received the request for information on May 10, 2017. Accordingly, the NEDC's ten-business-day deadline was May 24, 2017.

¹Although you do not raise sections 552.110 or 552.131 of the Government Code in your brief, we understand you to raise these sections based on the substance of your arguments.

However, you did not request a ruling from this office until May 25, 2017. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the NEDC failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The NEDC claims sections 552.110 and 552.131 of the Government Code for the submitted information. Because sections 552.101 and 552.131(a) can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these sections for the submitted information. However, we find you have failed to establish a compelling reason to address section 552.131(b) of the Government Code.

Although the NEDC asserts the submitted information is excepted under section 552.110(b) of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See Gov't Code* § 552.110(b) (excepts from disclosure commercial or financial information obtained from third party). Thus, we do not address the NEDC's assertion under section 552.110(b) of the Government Code. Additionally, no third party has made a demonstration that release of the submitted information would cause a third party substantial competitive harm. *See Open Records Decision Nos. 661 at 5-6 (1999)* (stating business enterprise claiming exception for commercial or financial information under section 552.110(b) must show by specific factual evidence release of requested information would cause that party substantial competitive harm). Therefore, none of the submitted information may be withheld under section 552.110(b).

Section 552.131 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause

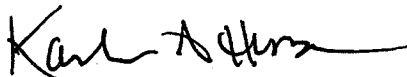
substantial competitive harm to the person from whom the information was obtained.

Gov't Code § 552.131(a). Section 552.131(a) only protects the proprietary interests of third parties that have provided information to governmental bodies, not the interests of governmental bodies themselves. In this instance, no third party has made a demonstration that any of the information at issue constitutes a trade secret or that release of any of the information at issue would cause a third party substantial competitive harm. *See generally* ORDs 661 at 5-6, 552 at 5. Accordingly, we conclude the NEDC may not withhold any of the submitted information under section 552.131(a) of the Government Code. The NEDC 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,



Kaelan A. Henze
Attorney
Open Records Division

KAH/eb

Ref: ID# 669628

Enc. Submitted documents

c: Requestor
(w/o enclosures)