



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2017

Ms. Leticia Brysch
City Clerk/PIO
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2017-25715

Dear Ms. Brysch:

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# 684319 (COB PIR# 9510).

The City of Baytown (the "city") received a request for Vopak Moda Houston, LLC's ("Vopak") responses to questions posed by the city council pertaining to Vopak's request for a special use permit. Although the city raises sections 552.110 and 418.182 of the Government Code, it makes no arguments in support of these exceptions, and instead, states release of the submitted information may implicate the proprietary interests of Vopak. Accordingly, the city states, and provides documentation showing, it notified Vopak of the request for information and of its 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.

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 Vopak explaining why the submitted information should not be released. Thus, we have no basis to conclude Vopak has a protected proprietary interest in the submitted information,

and the city may not withhold any portion of it on that basis. *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 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 684319

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)