



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 14, 2019

Mr. David T. Ritter
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2019-12932

Dear Mr. Ritter:

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# 765435 (City ID G10791).

The City of McKinney (the "city"), which you represent, received a request for a specified letter. 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.

Although you contend some of the submitted information is excepted under section 552.110 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 (excepting from disclosure "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and "[c]ommercial 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"). Thus, we do not address the city's argument under section 552.110.

¹We note, although you raise section 552.104 of the Government Code, you make no argument to support this exception. Therefore, we presume you have withdrawn your claim this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

Section 552.131 of the Government Code relates to economic development information and provides, in part, the following:

(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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Id. § 552.131(a)-(b). Section 552.131(a) excepts from disclosure only “trade secret[s] of [a] business prospect” and “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.” *Id.* This aspect of section 552.131 is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999), 552 at 5 (1990). We note section 552.131(a) does not protect the interests of a governmental body regarding the release of information pertaining to economic development negotiations. Thus, we do not address your arguments under section 552.131(a) for the submitted information. Further, we have not received arguments from any third party explaining the information contains the third party’s trade secrets or its commercial or financial information. *See* Gov’t Code § 552.305(d)(2)(B). Because no third party demonstrated the information qualifies as a trade secret or release of the information would result in substantial competitive harm, we conclude none of the submitted information may be withheld pursuant to section 552.131(a).

Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person. *See id.* § 552.131(b). Upon review, we find the city has demonstrated portions of the submitted information consist of information about financial or other incentives being offered to a business prospect by the city. Accordingly, the city may withhold the information we have marked under section 552.131(b). However, we find you failed to demonstrate the remaining information at issue consists of information about financial or other incentives that are being offered to a business prospect. Therefore, we conclude the city may not withhold the remaining information under section 552.131(b). As no further exceptions to disclosure have been raised, the city 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/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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/gw

Ref: ID# 765435

Enc. Submitted documents

c: Requestor
(w/o enclosures)