



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 2, 2019

Mr. J. David Dodd III  
Town Attorney  
Town of Trophy Club  
1 Trophy Wood Drive  
Trophy Club, Texas 76262

OR2019-18161

Dear Mr. Dodd:

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# 773605.

The Town of Trophy Club (the "town") received a request for e-mails between named individuals during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.110, and 552.131 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of OTD TC Compound, LLC and OTD TC Compound 2, LLC (collectively "OTD"); HG SPLY Co. ("HG"); and Three Seamen, LLC ("Three Seamen"). Accordingly, you state, and provide documentation showing, you notified these interested third parties of the request for information and of the 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 received comments on behalf of OTD and HG. We have considered the submitted arguments and reviewed the submitted information.

Although the town argues 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. Thus, we do not address the town's argument under

section 552.110. An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from Three Seamen. Thus, we have no basis to conclude Three Seamen has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 any of the submitted information on the basis of any proprietary interest Three Seamen may have in the information.

Section 552.104(a) of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at 841. HG and OTD state they have competitors. In addition, OTD and HG state release of the information at issue would cause serious competitive harm to OTD and HG. After review of the information at issue and consideration of the arguments, we find OTD and HG have established the release of the information at issue would give advantage to competitors or bidders. Thus, we conclude the town may withhold the information we have marked under section 552.104(a) of the Government Code.<sup>1</sup> Although the town asserts section 552.104 for the remaining information, we find you have failed to establish the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the town may not withhold any of the remaining information under section 552.104(a) of the Government Code.

The town generally asserts section 552.101 of the Government Code for the remaining information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is considered to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). However, the town has failed to direct our attention to any law, nor are we aware of any law, under which any of the submitted information is considered to be confidential for purposes of section 552.101. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code.

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Section 552.131 of the Government Code relates to economic development information and 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.

(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].

Gov't Code § 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. 552 at 5 (1990), 661 at 5-6 (1999). 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 information at issue. Further, we have not received arguments from any third party explaining the remaining 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 at issue qualifies as a trade secret or release of the information at issue would result in substantial competitive harm, we conclude none of the remaining 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). Section 552.131(b) protects the interests of governmental bodies, not third parties. You assert the remaining information relates to an ongoing town project. Upon review, however, we find you have failed to demonstrate any portion of the remaining information reveals financial or other incentives that are being offered to a business prospect.

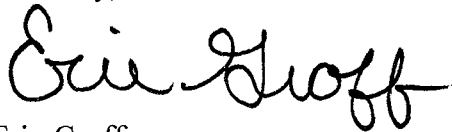
Thus, we conclude the town may not withhold any of the remaining information under section 552.131(b) of the Government Code.

In summary, the town may withhold the information we have marked under section 552.104(a) 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/orl\\_ruling\\_info.shtml](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,



Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/be

Ref: ID# 773605

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)