



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2020

Ms. Annette Villarreal
City Secretary
City of Palmview
400 West Veteran's Boulevard
Palmview, Texas 78572-8327

OR2020-02031

Dear Ms. Villarreal:

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# 807738 (COP# 1920-10).

The City of Palmview (the "city") received a request for the travel expenses of three named individuals during a specified time period, legal services agreements during a specified time period, and information pertaining to the purchase of a specified property. We understand the city will release some information to the requestor. The city claims some of the submitted information is excepted from disclosure under sections 552.105 and 552.131 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information, some of which consists of representative samples.¹

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The city received the request for information on October 21, 2019. The city states, and provides documentation showing, on November 4, 2019, it sent the requestor a notice under section 552.221(d) of the Government Code stating the city needed additional time to fulfill the request.

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.221(d) provides when a governmental body must make information available to a requestor if the governmental body certifies it cannot do so within ten business days of receiving the request. *See id.* § 552.221(d). However, we note section 552.221(d) does not affect the city's deadlines under section 552.301 of the Government Code. Accordingly, the city was required to provide the information required by section 552.301(b) by November 4, 2019. However, the envelope in which the city provided the information required by section 552.301 was postmarked November 8, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 city claims sections 552.105 and 552.131 of the Government Code for the submitted information. Because section 552.131(a) of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this section to the submitted information. However, we find the city has failed to establish a compelling reason to address its claims under sections 552.105 and 552.131(b) of the Government Code.

Section 552.131 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.

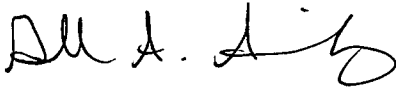
Gov't Code § 552.131(a). Section 552.131(a) only protects the proprietary interests of third parties that have provided information to governmental bodies, not the interests of governmental bodies themselves. In this instance, no third party has made a demonstration that any of the information at issue constitutes a trade secret or that release of any of the information at issue would cause a third party substantial competitive harm. *See generally* Open Records Decision Nos. 661 at 5–6 (1999), 552 at 5 (1990). Therefore, we conclude

the city may not withhold any of the submitted information under section 552.131(a) of the Government Code. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/be

Ref: ID# 807738

Enc. Submitted documents

c: Requestor
(w/o enclosures)