



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 2, 2020

Ms. Andrea D. Russell
Counsel for the City of Rhome
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2020-07845A

Dear Ms. Russell:

This office issued Open Records Letter No. 2020-07845 (2020) on March 12, 2020. Since that time, we have received new information that affects the fact on which that ruling was based. *See* Gov't Code §§ 552.306, .352. Thus, we hereby withdraw the prior ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2020-07845. *See generally id.* § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). Your request was assigned ID# 832977.

The City of Rhome (the "city"), which you represent, received a request for certain information pertaining to a specified meeting and information pertaining to a specified development project during a stated period of time. We understand the city has released some information to the requestor. Although you take no position regarding whether the submitted information is excepted from disclosure, you state release of the information at issue may implicate the proprietary interests of Rhome 52 Partners, LP ("Rhome 58").¹ Accordingly, you state the city notified Rhome 58 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

¹ We note, and you acknowledge, the city did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302; Open Records Decision No. 150 at 2 (1977). Thus, we will consider whether the information at issue is excepted from disclosure under the Act.

circumstances). We have received comments on behalf of Rhome 58. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note Rhome 58 argues against the release of information the city has not submitted to this office for our review. This ruling does not address information that was not submitted by the city and is limited to the information the city has submitted for our review.² *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested).

Rhome 58 raises section 552.110 of the Government Code for its information at issue.³ Section 552.110(b) protects “[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[.]” *Id.* § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue). Rhome 58 states the information at issue consists of commercial and financial information that, if released, “would cause substantial competitive harm to Rhome 58[.]” Rhome 58 asserts release of this information “would provide other developers and landowners with a competitive advantage by utilizing Rhome 58’s extensive engineering, financial, and legal analysis for free, and by disclosing potential critical cost and pricing information derived from such analysis.” Upon review, we find Rhome 58 has demonstrated the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the submitted information under section 552.110(b) of the Government Code.⁴

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

² As we are able to make this determination, we need not address Rhome 58’s arguments against disclosure of this information.

³ We note the city received the present request for information on December 16, 2019. Thus, although Rhome 58 raises the current version of section 552.110 of the Government Code in its brief, we understand Rhome 58 to raise the former version of section 552.110 based on the substance of its arguments.

⁴ As our ruling is dispositive, we need not address Rhome 58’s remaining arguments against disclosure of the submitted information.

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jlbm

Ref: ID# 832977

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Third Party
(w/o enclosures)