



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 20, 2020

Mr. Joseph Behnke  
Assistant General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2020-11310

Dear Mr. Behnke:

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# 823156 (OOG ID# 042-20).

The Office of the Governor (the "governor's office") received a request for information related to certain designations for "census tracts" during a specified time period, as well e-mail communications sent or received by a named individual related to a particular subject. You state the governor's office is releasing some information to the requestor. Although the governor's office takes no position as to whether the submitted information is excepted under the Act, the governor's office states release of the submitted information may implicate the proprietary interests of the City of Dallas and MDJ BUCKNER, LLC. Accordingly, the governor's office states, and provides documentation showing, it notified the 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 §§ 552.304 (interested party may submit comments stating why information should or should not be released), .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.

Initially, you state some of the submitted information was previously released in response to a previous request for information, as a result of which this office issued Open Records Letter No. 2019-10140 (2019). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold that exact information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under

law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). Accordingly, pursuant to section 552.007, the governor's office may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. *See* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, because third party interests can provide a compelling reason against disclosure, we will consider whether the information at issue may be withheld based on the interests of the notified third parties. We will also consider whether the information that was not at issue in the previous ruling may be withheld based on the interests of the notified third parties.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.304 or 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 §§ 552.304, .552.305(d)(2)(B). As of the date of this letter, we have not received comments from either of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude either of the third parties has a protected proprietary interest in the submitted information. *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 governor's office may not withhold the submitted information on the basis of any proprietary interest either third party may have in the information. The governor's office 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,

Erin Groff  
Assistant Attorney General  
Open Records Division

EMG/jlbm

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)