



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 27, 2020

Ms. Sherri McDade
Chief Executive Officer
Denton Housing Authority
1225 Walton Street
Denton, Texas 76205

OR2020-26952

Dear Ms. McDade:

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# 850026 (Ref. No. DHA2020-01).

The Denton Housing Authority (the "authority") received a request for nine categories of information pertaining to Enclave Brinker GP, LLC ("Enclave"), and Enclave Brinker, LP ("Brinker"). You claim Brinker and Enclave are not subject to the Act. You also state release of the submitted information may implicate the proprietary interests of Brinker and Enclave. Accordingly, you state, and provide documentation showing, you notified these interested third parties of the request for information and of their 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 from Brinker. We have considered the submitted arguments and reviewed the submitted information.

The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) reads as follows:

(a) In this chapter, “public information” means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer’s or employee’s official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Id. § 552.002(a-1). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov’t Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). Further, information that is written, produced, collected, assembled, or maintained by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity may be subject to disclosure under the Act if the information pertains to official business of the governmental body. Gov’t Code § 552.002(a)(3). Information is “in connection with the transaction of official business” if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See id.* § 552.002(a-1). Moreover, section 552.001 of the Act provides it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a).

The authority and Brinker contend the submitted information is not subject to disclosure under the Act because Brinker and Enclave are not governmental bodies. *See id.* § 552.003(1)(A) (defining “governmental body”). We note, however, the instant request for information was received by the authority. The authority does not argue that it does not possess the requested information or have a right of access to the requested information. Further, we note the authority submitted the information as information responsive to the request, and the submitted information pertains to the official business of the authority. *See id.* § 552.002(a)(2)(B). Therefore, we need not determine whether Enclave or Brinker is a governmental body. Accordingly, we conclude this information is subject to the Act and must be released, unless the information falls within an exception to disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302.

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 id.* § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from Brinker. Thus, we have no basis to conclude Brinker has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the authority may not withhold any of the submitted information on the basis of any proprietary interest Brinker may have in the information.

Section 552.110(b) of the Government Code states “information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret.” *See id.* § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

- (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and
- (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

Id. § 552.110(a). Brinker argues its information consists of trade secrets subject to section 552.110(b).¹ Upon review, however, we find Brinker has failed to provide specific factual evidence demonstrating any portion of the information at issue is a trade secret. Therefore, the authority may not withhold any of the information at issue under section 552.110(b) of the Government Code.

Section 552.110(c) of the Government Code excepts from disclosure “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

¹ We note, although Brinker also raises section 552.0222 of the Government Code, section 552.0222 is not an exception to disclosure. Rather, section 552.0222 enumerates categories of information that may not be withheld under section 552.110 or section 552.1101 of the Government Code. *See Gov’t Code* § 552.0222.

information was obtained[.]” *Id.* § 552.110(c). Brinker argues its information consists of commercial or financial information subject to section 552.110(c). Upon review, however, we find Brinker has failed to provide specific factual evidence demonstrating the remaining information at issue constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the authority may not withhold any of the information at issue under section 552.110(c) of the Government Code. The authority 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,

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/gw

Ref: ID# 850026

Enc. Submitted documents

c: Requestor
(w/o enclosures)