



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2020

Ms. Esther Pena
Administrative Assistant
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR2020-31293

Dear Ms. Pena:

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# 858100 (PIR# W017401-091720).

The City of Laredo (the "city") received a request a specified document pertaining to a proposed real estate transaction. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.113 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Regional Land Management Services, Ltd. ("RLMS") and Rosetta Resources, Inc. ("Rosetta"). Accordingly, you state, and provide documentation showing, you notified these 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 RLMS. We have reviewed the submitted information and considered the submitted arguments. We have also received and considered comments from a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Rosetta explaining why the submitted information should not be

released. Therefore, we have no basis to conclude Rosetta 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 city may not withhold any portion of the submitted information related to Rosetta on the basis of any proprietary interest it may have in the information.

Section 552.110 of the Government Code protects (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See id.* § 552.110(b)-(c). Although the city argues the submitted information is excepted under section 552.110, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the city's argument under section 552.110 of the Government Code.

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). RLMS asserts its information consists of trade secrets subject to section 552.110(b). Upon review, we find RLMS has failed to provide specific factual evidence demonstrating any portion of the submitted information at issue is a trade secret. Therefore, the city may not withhold any of the submitted 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 information was obtained[.]" *Id.* § 552.110(c) RLMS argues some of the submitted information consists of commercial or financial information subject to section 552.110(c). Upon review, however, we find RLMS has failed to provide specific factual evidence demonstrating the submitted information constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the city may not withhold any of the submitted information under section 552.110(c) of the Government Code.

Section 552.113 provides, in relevant part, as follows:

(a) Information is excepted from [required public disclosure under the Act] if it is:

...

(2) geological or geophysical information or data, including maps concerning wells, except information filed in connection with an application or proceeding before an agency[.]

Id. § 552.113(a)(2). In Open Records Decision No. 627 (1994), this office concluded section 552.113(a)(2) protects from public disclosure only (i) geological and geophysical information regarding the exploration or development of natural resources that is (ii) commercially valuable. ORD 627 at 3-4 (overruling rationale of Open Records Decision No. 504 (1988)). The decision explained the phrase “information regarding the exploration or development of natural resources” means “information indicating the presence or absence of natural resources in a particular location, as well as information indicating the extent of a particular deposit or accumulation.” *Id.* at 4 n.4. However, section 552.113(a)(2) does not except general geological information about a particular location that is unrelated to the “presence or absence of natural resources.” In order to be commercially valuable for purposes of Open Records Decision No. 627 and section 552.113, information must not be publicly available. *See* Open Records Decision No. 669 (2000). Upon review, we find you have failed to demonstrate any of the remaining information is commercially valuable geological or geophysical information regarding the exploration of or development of natural resources. Accordingly, the city may not withhold any of the submitted information under section 552.113 of the Government Code.

RLMS claims its remaining information is subject to section 552.131 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). We note the scope of section 552.131(a) is co-extensive with that of section 552.110 of the Government Code. *See id.* § 552.110(a)-(c). Because we have already disposed of RLMS’s claims for the information at issue under section 552.110, the city may not withhold any of the submitted information under section 552.131(a) of the Government Code. 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,

Matthew Taylor
Assistant Attorney General
Open Records Division

MT/jm

Ref: ID# 858100

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)