



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 18, 2022

Mr. Reid Koenig
Paralegal
City of Dallas
1500 Marilla Street, 7DN
Dallas, Texas 75201

OR2022-01378

Dear Mr. Koenig:

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# 926110 (ORR# C009235-100921).

The City of Dallas (the "city") received a request for documents and communications pertaining to economic development of a specified area.¹ You state you will release some of the requested information. 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 Dallas Housing Foundation ("DHF"). Accordingly, you state, and provide documentation demonstrating, the city notified DHF 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 circumstances). We have received comments submitted by DHF.² We have considered the submitted arguments and reviewed the submitted information.

Section 552.110(b) states "information is [excepted from required disclosure] if it is demonstrated based on specific factual evidence that the information is a trade secret." *See* Gov't Code § 552.110(b). Section 552.110(a) defines a trade secret as all forms and types of information if:

¹ We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

² Although we understand DHF to raise section 552.131 of the Government Code for its information at issue, as it provides no arguments explaining how this exception is applicable to the information at issue, we assume it no longer asserts this exception. *See* Gov't Code §§ 552.301, .302.

(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). Section 552.110(c) of the Government Code states:

[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 is [excepted from required disclosure].

Id. § 552.110(c). DHF argues some of its information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c).³ Upon review, we find DHF has failed to provide specific factual evidence demonstrating that any portion of its information constitutes trade secrets or commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city may not withhold any of the submitted information under section 552.110 of the Government Code.

Section 552.131 of the Government Code 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.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

³ Although DHF does not cite to section 552.110 of the Government Code in its brief, we understand it to raise this exception based on the substance of its arguments.

Id. § 552.131(a)-(b). Section 552.131(a) excepts from disclosure only “trade secret[s] of [a] business prospect” and “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.* DHF generally raises 552.131 for its information. Upon review, we find DHF has failed to demonstrate the information at issue qualifies as a trade secret or release of the information at issue would result in substantial competitive harm. Therefore, we find none of the information at issue may be withheld pursuant to section 552.131(a). Furthermore, we note section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the city does not assert section 552.131(b) as an exception to disclosure, we conclude no portion of the information at issue is excepted under section 552.131(b) of the Government Code.

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. Therefore, the city must release the submitted information; however, any information subject to copyright may only be released in accordance with copyright law.

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,

Joseph Hoggatt
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)