



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2022

Ms. Savannah L. Koehler
Paralegal
City of New Braunfels
550 Landa Street
New Braunfels, Texas 78130

OR2022-31243

Dear Ms. Koehler:

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# 976930 (ORR Nos. C975-071922 & C978-071922).

The City of New Braunfels (the "city") received two requests from the same requestor for specified communications. Although the city takes no position as to whether the submitted information is excepted under the Act, the city states release of the submitted information may implicate the proprietary interests of Aspen Grove Realty ("Aspen"). Accordingly, we understand the city notified Aspen 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 § 552.305(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, 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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). The city has provided correspondence from Aspen generally objecting to release of the information at issue. However, Aspen does not raise any exceptions to disclosure under the Act or assert it has a protected proprietary interest in the information at issue. As of the date of this letter, we have not received comments from Aspen explaining why the submitted information should not be released. Therefore, we have no basis to conclude Aspen 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 the submitted information on the basis of any proprietary interest Aspen may have in the information.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).¹ *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the city must withhold the submitted personal e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

We note some of the materials at issue 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.

In summary, the city must withhold the submitted personal e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. The city must release the remaining information; however, any information that is subject to copyright may be released only 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,

Meagan Hunter
Assistant Attorney General
Open Records Division

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¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 976930

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)