



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 17, 2022

Ms. Heather Lockhart  
Staff Attorney  
New Braunfels Utilities  
263 Main Plaza  
New Braunfels, Texas 78130

OR2022-35956

Dear Ms. Lockhart:

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# 981934 (Ref. No. R000437-090822).

New Braunfels Utilities ("NBU") received a request for the responses to RFP No. 02601, New Braunfels Utilities Main Plaza Redevelopment. Although NBU takes no position as to whether the requested information is excepted under the Act, NBU states release of the requested information may implicate the proprietary interests of three third parties.<sup>1</sup> Accordingly, NBU 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 § 552.305(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 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). As of the date of this letter, we have not received comments from the notified third parties explaining why the requested information should not be

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<sup>1</sup> NBU informs us the notified third parties are IBF Hospitality; Seals Family Properties, LLC; and Weston Urban, LLC.

released. Therefore, we have no basis to conclude any third party has a protected proprietary interest in the requested information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, NBU may not withhold the requested information on the basis of any proprietary interest a notified the third party may have in the information.

We must also address NBU's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). NBU received the request for information on September 8, 2022. As of this date, NBU has not submitted a copy or representative sample of the information requested. Accordingly, we conclude NBU has failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Because NBU has not submitted the requested information for our review, we have no basis for finding any of the information at issue excepted from disclosure. Thus, we have no choice but to order the requested information released pursuant to section 552.302 of the Government Code.

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,

Michelle Garza  
Attorney  
Open Records Division

MRG/pt

Ref: ID# 981934

c: Requestor

Third Parties