



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 21, 2022

Mr. LaShawne Dunlap
Paralegal
City of Mansfield
1200 East Broad Street
Mansfield, Texas 76063

OR2022-36355

Dear Mr. Dunlap:

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# 985785 (PRR# 1365-2022).

The City of Mansfield (the "city") received a request for information pertaining to a specified permit and construction of a home at a specified address. Although the city takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of DFH Coventry Homes ("Coventry"). Accordingly, you state, and provide documentation showing, the city notified Coventry of the request for information and 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 from Coventry. We have considered the submitted arguments and reviewed the submitted information.

Section 552.110(b) of the Government states, "[e]xcept as provided by [s]ection 552.0222, information is [excepted from public 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) 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) Except as provided by Section 552.0222, 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 is [excepted from required disclosure].

Id. § 552.110(c). Coventry argues some of the submitted information consists of trade secrets subject to section 552.110(b) and commercial or financial information subject to section 552.110(c). Upon review, we find Coventry has demonstrated some of the submitted information constitutes commercial or financial information, the release of which would cause substantial competitive harm. Accordingly, the city must withhold the information we marked under section 552.110(c) of the Government Code. However, we find Coventry has failed to provide specific factual evidence demonstrating the remaining information is a trade secret or constitutes commercial or financial information, the release of which would result in substantial competitive harm. Therefore, the city may not withhold any of Coventry's remaining information under section 552.110(b) or 552.110(c) of the Government Code.

We note the remaining information appears to be protected by copyright. A custodian of public records must comply with 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 information we marked under section 552.110(c) of the Government Code. The city must release the remaining 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,

Justin H. Miller
Attorney
Open Records Division

JHM/eb

Ref: ID# 985785

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)