



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 15, 2022

Mr. Javier Villalobos  
Counsel for the City of Donna  
Law Office of Villalobos, P.C.  
5804 North 23rd Street  
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OR2022-38986

Dear Mr. Villalobos:

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# 990528.

The City of Donna (the "city"), which you represent, received a request for a specified study report. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed report made for the city, which is subject to section 552.022(a)(1) and must be released unless the information is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. *Id.* Although you seek to withhold the submitted

information under section 552.131(b) of the Government Code, this section is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the city may not withhold the submitted information under section 552.131(b) of the Government Code. However, because sections 552.131(a) and 552.110 of the Government Code make information confidential under the Act, we will consider the applicability of these exceptions to the submitted 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* Gov't Code § 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.

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].

*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.* This aspect of section 552.131 is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). We note section 552.131(a) does not protect the interests of a governmental body regarding the release of information pertaining to economic development negotiations. Thus, we do not address the city's arguments under section 552.131(a) for the information at issue. Further, we have not received arguments from any third party explaining the submitted information contains the third party's trade secrets or its commercial or financial information. *See* Gov't

Code § 552.305(d)(2)(B). Because no third party has demonstrated the information at issue qualifies as a trade secret or release of the information at issue would result in substantial competitive harm, we conclude none of the information at issue may be withheld pursuant to section 552.131(a). 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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/mo

Ref: ID# 990528

Enc. Submitted documents

c: Requestor  
(w/o enclosures)