



Office of the Attorney General

State of Texas

October 30, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Jesús Garza
Executive Director
Texas Water Commission
P. O. Box 13087
Austin, Texas 78711-3087

OR92-635

Dear Mr. Garza:

The City of Alvarado has asked the Texas Water Commission (the commission) pursuant to the Texas Open Records Act, article 6252-17a, V.T.C.S., for copies of certain plans and specifications for water and sewerage improvements submitted to the commission in connection with the city's water quality permit application. Your request was assigned ID# 17441.

You state that a registered engineer submitted the plans and specifications to the commission on behalf of the City of Alvarado, at that time his client. Subsequently, the relationship between the engineer and his client deteriorated. The engineer asked the commission to return the plans and specifications to him, but before they were returned, the City of Alvarado made its request for copies of the documents. You state that the staff of the commission has no interest in withholding this information from either party, but you wish to comply with the law.

The engineer who prepared the plans and specifications argues that his interest in them is protected by the Copyright Act of 1976, 17 U.S.C. §§ 101-702. The supremacy clause of the United States Constitution prohibits you from complying with the open records act where it conflicts with the copyright law. See *Antoine v. Washington*, 420 U.S. 194 (1975). Although this office cannot determine as a matter of law that these documents are within the protection of the copyright law, we believe that the engineer's argument is sufficiently plausible that you should treat the documents as copyright material.

Section 102 of title 17 of the United States Code provides in part:

(a) Copyright protection subsists, in accordance with this title [17], in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

(1) literary works;

...

(5) pictorial, graphic, and sculptural works;

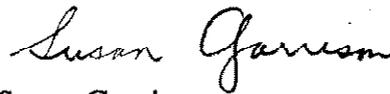
"Literary works" are works "expressed in words, numbers, or other verbal or numerical symbols or indicia," including works in a manuscript form. 17 U.S.C. § 101. "Pictorial, graphic, and sculptural works" include technical drawings. *Id.* Engineering drawings and plans are protected by copyright law. *Schuchart & Assocs., Professional Eng'rs v. Solo Serve Corp.*, 540 F. Supp. 928 (W.D. Tex. 1982). A work is "original" and qualifies for copyright protection if it is independently created by the author and possesses some minimal degree of creativity. *Feist Publications v. Rural Tel. Serv. Co.*, 111 S. Ct. 1282 (1991). The owner of copyright has the exclusive rights to reproduce the copyrighted work, subject to fair use in accord with title 17, section 107 of the United States Code.

This office cannot make the fact findings necessary to conclude that the requested records have the protection of the copyright law. However, based on the facts and documents provided to us, as well as the authorities we have reviewed in this ruling, we can advise you how to respond to the open records request. We advise you to treat the specifications and plans as works protected by copyright law and the engineer who prepared them as holder of the copyright. Thus, you may not provide copies to the City of Alvarado or other members of the public that request them pursuant to the open records act. *See* Attorney General Opinion MW-307

(1981). You may allow the City of Alvarado to inspect the documents without providing it with copies.¹

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-635.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SLG/lmm

Ref.: ID# 17441

Enclosure: Attorney General Opinion MW-307

cc: Mr. David Mears
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¹No publication of a work occurs when copies are filed with a governmental body, even if they are available for public inspection. *WPOW, Inc. v. MRLJ Enter.*, 584 F. Supp. 132 (D.C. 1984) (engineering report concerning site for a broadcasting facility filed with the Federal Communications Commission); see 17 U.S.C. §§ 104(a),(b), 108 (b),(c), 401 (a),(b)(2).

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