



March 15, 1999

Ms. Lisa Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

OR99-0729

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the “act”), chapter 552 of the Government Code. Your request was assigned ID# 121817.

The City of Corpus Christi (the “city”) received an open records request for

All geographic data and related attribute data in digital format for the city of Corpus Christi including but not limited to the geographic coordinates of points, lines and polygons used, produced, administered or maintained by your office or any other office of the city.

In response to the request, you submit to this office for review “a representative sample of attribute information,” consisting of the city’s data and maps, which you assert is responsive.<sup>1</sup> The Open Records Act requires a governmental body to “promptly produce public information for inspection, duplication, or both on application by any person.” Gov’t Code § 552.221; *see also id.* § .021.<sup>2</sup>

You explain that the requested information

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<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>The Open Records Act contains thirty exceptions to required public disclosure. Gov’t. Code §§ 552.101-.130.

is copyrighted Geographic Information System ( G.I.S.) Data. This G.I.S. data was created by [the city] through the process of searching through public information (deed records, plats etc.), altering, editing, and arranging the information, and finally, digitizing it. The end product of this arduous effort is entitled to copyright protection as a compilation.

*See generally* 17 U.S.C. § 103 (copyright laws protect work or compilation, not the amount of effort expended). In subsequent correspondence to this office, the requestor, however, asserts that “[w]e are not asking for maps. We are asking for data, and data itself is NOT copyrightable.” Therefore, we must address whether the underlying data gathered, from “deed records, plats, etc.,” by the city for the composition of the mapping must be released to the requestor. You contend that because the city holds a copyright to the requested information, the information is excepted from required public disclosure. In other words, you ask whether copyright law provides the city a basis to refuse to comply with the Open Records Act. Since you represent that the requestor seeks both the map and the underlying data, we will first consider whether the “GIS map layers” are subject to release.

At the outset we note that a full analysis of Federal Copyright Act (the “FCA”), title 17 of the United States Code, is beyond the scope of this ruling. The federal copyright law does not make information confidential, but rather gives the copyright holder the exclusive right to reproduce his work, subject to another person's right to make fair use of it. 17 U.S.C. §§ 106, 107. Assuming that the city in fact holds a legal, enforceable copyright on the map, we believe that any copying must be consistent with federal copyright law. *See* 17 U.S.C. § 101 *et seq.*; Attorney General Opinion JM-672 (1987) (custodian of public records must comply with copyright law and is not required to furnish copies of copyrighted records owned by third-parties). Thus, assuming the requested materials are in fact copyrighted, under the Open Records Act, the city must nevertheless allow the requestor access to and or copies of the information. However, since it is the requestor's responsibility to adhere to the federal copyright law, then the requestor assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

Next we consider whether the underlying *data* sought by the requestor is subject to the act. The FCA gives copyright protection to “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, whether directly or with the aid of a machine or device.” We are not aware that the Texas Legislature has authorized the city to take steps to protect this type of *data*. *See generally* 17 U.S.C. § 105 (“copyright protection under this title is not available for any work of the United States Government”). However, the FCA gives copyright owners the exclusive right to control the use of copyrighted works. *See* 17 U.S.C. § 106. This right is subject to exceptions, the most important of which may be the “fair use” of the works. *See id.* § 107.

We believe the Open Records Act and the FCA are compatible. While the act prohibits a governmental body from making an inquiry of a requestor, *see id.* § 552.222, it does not address the subsequent use of public information. The act, however, does not prohibit a governmental body from protecting its copyright by entering into licensing or other use agreements. Thus, we conclude that, while the Open Records Act requires the city to provide access to or copies of public information, or both, the city may place restrictions on the use of its copyrighted works consistent with the rights of a copyright owner under the FCA, to the extent the “data” at issue is subject to copyright protection.<sup>3</sup> *See* 17 U.S.C. §§ 102, 103. Consequently, the FCA may not be used to deny access to or copies of the *data* sought by the requestor under the Open Records Act.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 121817

Enclosure: Submitted documents

cc: Mr. Curtis P. Clogston  
PFQ Computing  
603 Navarro Street, Suite 800  
San Antonio, Texas 78205  
(w/o enclosures)

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<sup>3</sup>We do not believe this office is the proper forum to address the issue of whether the information at issue is copyrightable under the common-law or federal law or whether a particular use of the information is a “fair use” under section 107 of the FCA. *See* Attorney General Opinion DM-98 at 3 (1992) (attorney general cannot resolve fact questions in opinion process); Open Records Decision No. 426 (1985).