



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 30, 2006

Ms. Wendy E. Ogden  
Assistant City Attorney  
City of Corpus Christi  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2006-09721A

Dear Ms. Ogden:

This office issued Open Records Letter No. 2006-09721 (2006) on August 23, 2006. We have since been made aware of an error in that ruling regarding which third-parties' proprietary interests were potentially implicated by the requested information. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on August 23, 2006. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act"))).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 258150.

The City of Corpus Christi (the "city") received a request for "pre-submittal notes, building permit and inspection information, other written building code-related communications, and all the plans and specifications" regarding four specified building types. Although you indicate that the responsive information may be excepted from disclosure under sections 552.101, 552.110, 552.113, and 552.131 of the Government Code, you make no arguments regarding these exceptions. However, you believe that this information may

implicate the proprietary interests of the following third-parties: Mr. William H. Holland (“Holland”); Mr. B. Mark Luddeke, AIA (“Luddeke”); and DFD Architects, Inc. (“DFD”). Accordingly, you inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, the city notified these third-parties of the request for information and of each party’s right to submit arguments explaining why the requested information should not be released. *See* Gov’t Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov’t Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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 requested information relating to that party should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Holland, Luddeke, or DFD. Thus, none of Holland, Luddeke, or DFD has demonstrated that any of the requested information is proprietary for purposes of the Act. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the city may not withhold any of the submitted information on the basis of any proprietary interest that these third-parties may have in the information.

We note, however, that some of the submitted information bears notices of copyright protection. A custodian of public records must comply with copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright law unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials that are protected by copyright law, 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. *See* Open Records Decision No. 550 (1990). Thus, the city must release the submitted information to the requestor. However, in releasing information that is protected by copyright, the city must comply with copyright law.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/eb

Ref: ID# 258150

c: Ms. Jeri L. S. Morey  
711 North Carancahua, No. 518  
Corpus Christi, Texas 78475

Mr. William H. Holland  
5700 South Staples, Suite F5  
Corpus Christi, Texas 78413

Mr. B. Mark Luddeke, AIA  
5262 south Staples, Suite 205  
Corpus Christi, Texas 78411

Mr. William A. Davies IV, AIA  
DFD Architechs, Inc.  
9801 Anderson Mills Road, Suite 220  
Austin, Texas 78750

Yum Kim Corporation  
4906 Greenwood  
Corpus Christi, Texas 78413