



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 19, 2008

Mr. Lawrence G. Provins  
Assistant City Attorney  
City of Pearland  
3519 Liberty Drive  
Pearland, Texas 77581-5416

OR2008-12925

Dear Mr. Provins:

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# 322087.

The City of Pearland (the "city") received a request for building blueprints for several specified addresses. You indicate the city does not have information responsive to some of the addresses.<sup>1</sup> Although you take no position as to the disclosure of the remaining requested information, you state the information may implicate the proprietary interests of third parties. You have verbally informed us you notified these third parties of the request and of their opportunity to submit comments to this office as to why the requested information should not be released to the requestor.<sup>2</sup> 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 the applicability of

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We understand the following third parties were notified: Don Pico's Restaurant, Jake's Grill, Silver Lake Self Storage and Office/Apartment, Bihner Engineering, Edgecomb and Associates, Inc., ESOR Consulting Engineers, Inc., McGuff Architects, Moziac Designs, RMS Engineering, and Wong and Associates.

exception to disclose under Act in certain circumstances). We have reviewed the submitted information.

Initially, we note you did not comply with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The submitted documentation shows the city received the requestor's original request on May 19, 2008. The city informed the requestor it did not have responsive documents on May 29, 2008. The requestor then clarified his request on June 2, 2008, and in doing so requested additional information.<sup>3</sup> Thus, the city's deadline in requesting a decision from this office for some of the requested information was June 5, 2008 and for the remaining requested information was June 16, 2008. However, you did not ask this office for a decision until July 15, 2008. Consequently, we find the city failed to comply with the procedural requirements of section 552.301.

When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Generally, a compelling reason exists when some other source of law makes the information confidential or third party interests are at stake. *See* Open Records Decision No. 630 at 3 (1994). Accordingly, we will determine whether any of the submitted information must be withheld to protect third party interests.

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 it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from any of the third parties that were notified. Thus, we have no basis to conclude the release of any portion of the submitted information would implicate their proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999)

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<sup>3</sup>*See* Gov't Code 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

(stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, the city may not withhold any portion of the submitted information on the basis of any proprietary interests these companies may have in the information.

We note, however, that some of the information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* 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. *See* Open Records Decision No. 550 (1990).

In summary, as we have received no arguments against disclosure, the submitted information must be released, but any copyrighted information must be released in accordance with the 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas 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 10 calendar days of the date of this ruling.

Sincerely,



Katherine M. Kroll  
Assistant Attorney General  
Open Records Division

KMK/eeg

Ref: ID# 322087

Enc. Submitted documents

c: Mr. Jimmy Pierson  
c/o Mr. Lawrence G. Provins  
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3519 Liberty Drive  
Pearland, Texas 77581-5416  
(w/o enclosures)

Wong & Associates  
7100 Regency Square Blvd, Suite 295  
Houston, Texas 77036  
(w/o enclosures)

Jake's Grill  
9415 Broadway Street  
Pearland, Texas 77584  
(w/o enclosures)

Silver Lake Self Storage  
9809 FM 518  
Pearland, Texas 77584  
(w/o enclosures)

Bihner Engineering  
8308 West Little York Road  
Houston, Texas 77040  
(w/o enclosures)

ESOR Consulting Engineers, Inc.  
10700 North Freeway, Suite 100  
Houston, Texas 77037  
(w/o enclosures)

Moziac Designs  
2851 Early Turn Drive  
Webster, Texas 77598  
(w/o enclosures)

Don Pico's Restaurant  
9811 FM 518, Suite 121  
Pearland, Texas 77584  
(w/o enclosures)

Edgecomb & Associates, Inc.  
2472 Bolsover, Suite 210  
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McGuff Architects  
5208 Broadway #208  
Pearland, Texas 77584  
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RMS Engineering  
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Atlanta, Georgia 30318  
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