



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 5, 2010

Ms. Jameene Yvonne Banks  
Denton, Navarro, Rocha & Bernal  
For City of Garden Ridge  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2010-01790

Dear Ms. Banks:

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# 371341.

The City of Garden Ridge (the "city"), which you represent, received a request for city drainage and construction plans related to a particular project. You state that, by letter dated December 14, 2009, the city offered to provide the documents at issue to the requestor for review or inspection; however the city did not receive a response from the requestor. You claim that the requested information is excepted from disclosure pursuant to federal copyright law.<sup>1</sup> Furthermore, you claim the submitted information may contain proprietary information subject to exception under the Act. Accordingly, you state, and have provided documentation showing, that you notified the Larry Thomas Company and Henry Bain Engineers, Inc. of the city's receipt of the request for information and of the companies' right

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<sup>1</sup>Although you raise section 552.022 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022. Further, although you raise section 552.107 of the Government Code, you have provided no arguments explaining how this exception is applicable to the submitted information. Therefore, we do not address your claim under section 552.107. Gov't Code § 552.301(e)(1)(A).

to submit arguments to this office as to why their information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered your arguments and reviewed the submitted information. We have also received and 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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from either of the interested third parties explaining why the information at issue should not be released. Therefore, we have no basis to conclude that either of these companies has a protected proprietary interest in the submitted information. *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). Consequently, none of the submitted information may be withheld on that basis.

Finally, although you argue some of the submitted information is excepted from disclosure pursuant to federal copyright law, we note copyright law does not make information confidential. *See* Open Records Decision No. 660 at 5 (1999). 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). Accordingly, the submitted information must be released to the requestor, but any information protected by copyright must be released in accordance with copyright law.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free,

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 371341

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

The Larry Thomas Company  
401 Isom Road, Suite 110  
San Antonio, Texas 78216  
(w/o enclosures)

Henry Bain Engineers, Inc.  
16111 Nacogdoches Road  
San Antonio, Texas 78247  
(w/o enclosures)