



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2010

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

OR2010-09749

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# 384895.

The City of Live Oak (the "city"), which you represent, received a request for construction plans for the Live Oak Medical Center. You state that, by letter dated April 26, 2010, 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.¹ 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 Seidal and Associates, Inc. and Unthank Design Group of the city's receipt of the request for information and of their right 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.

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 the

¹Although 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*.

interested third parties explaining why the information at issue should not be released. Therefore, we have no basis to conclude that these companies have 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.

Although you argue 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, 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 384895

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

cc: Seidal and Associates, Inc.
427 Greenwich Boulevard
San Antonio, Texas 78209
(w/o enclosures)

Unthank Design Group
5930 VanDervoort Drive
Lincoln, Nebraska 68516
(w/o enclosures)