



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 13, 2010

Ms. Angela M. DeLuca  
Assistant City Attorney  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR2010-10372

Dear Ms. DeLuca:

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# 386394.

The City of Bryan (the "city") received a request for all correspondence and permits applied for and acquired by a named individual related to construction of that individual's residence at a specified address. Although you take no position as to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of the two third parties: Watts Pool Company ("Watts") and Standard Renewable Energy ("Standard"). Pursuant to section 552.305 of the Government Code, you notified Watts and Standard of the request and of the companies' right to submit arguments to this office as to why their information should not be released. 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 under the Act in certain circumstances). We have 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 Watts or Standard explaining why any portion of the submitted information should not be released.

Therefore, we have no basis to conclude these companies have any 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. Consequently, the city may not withhold any of the submitted information on the basis of any proprietary interest Watts or Standard may have in the information.

However, one of the submitted permits contains two private e-mail addresses subject to section 552.137 of the Government Code.<sup>1</sup> Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov’t Code* § 552.137(a)-(c). The e-mail addresses we marked are not specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners of these e-mail addresses affirmatively consent to their disclosure.<sup>2</sup>

Upon review, portions of the submitted information are 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 materials that are subject to copyright protection 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, the city must withhold the e-mail addresses we marked under section 552.137 of the Government Code unless the owners of the addresses consent to their disclosure. The remaining submitted information must be released, but any copyrighted information must be released in accordance with copyright law.

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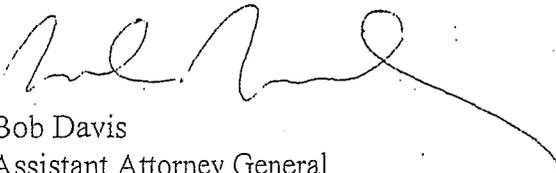
<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including private e-mail addresses under section 552.137, without the necessity of requesting an attorney general decision.

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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/eeg

Ref: ID# 386394

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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(w/o enclosures)

Mr. Brian Sawyer  
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Houston, Texas 77077  
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