



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2011

Mr. David H. Guerra
For City of Mission
King, Guerra, Davis & Garcia, P.C.
P.O. Box 1025
Mission, Texas 78573

OR2011-11835

Dear Mr. Guerra:

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# 427106.

The City of Mission (the "city"), which you represent, received a request for the two sets of residential construction plans of a specified address. Although you take no position with respect to the submitted information, you state that release of this information may implicate the proprietary interests of Danze & Davis Architects, Inc. ("Danze"), DEH Structural Engineering, Inc. ("DEH"), and D.R. Horton. Accordingly, you have notified these third parties of the request and of their right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under 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, none of the third parties have submitted comments to this office explaining why their submitted information should not be released.

Therefore, we have no basis to conclude any portion of the submitted information constitutes proprietary information of these companies. *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 based on the proprietary interests of the third parties.

You note that 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. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *See* Open Records Decision No. 109 (1975). 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. As no exceptions to disclosure have been raised, the submitted information must be released to the requestor, but any information that is protected by copyright may only 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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 427106

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Danze & Davis Architects, Inc.
4701 Spicewood Springs Road, Suite 200
Austin, Texas 78759
(w/o enclosures)

DEH Structural Engineering, Inc.
2710 Treble Creek, Suite 100
San Antonio, Texas 78258
(w/o enclosures)

D.R. Horton
1709 North Jackson Road
McAllen, Texas 78501
(w/o enclosures)