



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2012

Ms. Connie Crawford  
Assistant County Attorney  
El Paso County  
4815 Alameda Avenue, 8<sup>th</sup> Floor, Suite B  
El Paso, Texas 79905

OR2012-06691

Dear Ms. Crawford:

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# 452729 (HO-12-055).

The El Paso County Hospital District (the "district") received a request for the "name of the architectural firm selected as most qualified during the Ysleta Pharmacy Renovation RFP #830-01/12-001" and a copy of the submittal of that firm. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Moore Nordell Kroeger Architects, Inc. ("Moore Nordell"). Accordingly, you state, and provide documentation showing, you notified Moore Nordell of the request for information and of its 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) (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 reviewed the submitted information.

We note 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

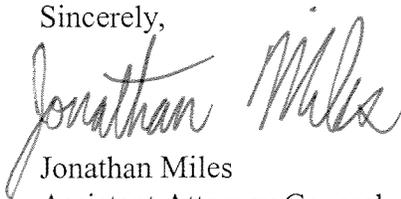
Moore Nordell explaining why its information should not be released. Therefore, we have no basis to conclude Moore Nordell has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial 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. Accordingly, the district may not withhold any of the information at issue on the basis of any proprietary interest Moore Nordell may have in it.

We note portions of the submitted information may be 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. Accordingly, the submitted information must be released, but any information that is subject to copyright may be released only 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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 452729

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Rodney Kroeger  
Moore Nordell Kroeger Architects, Inc.  
7170 Westwind Drive, Suite 105  
El Paso, Texas 79912  
(w/o enclosures)