



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 12, 2004

Ms. Maleshia Brown Farmer  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2004-0222

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194065.

The City of Fort Worth (the "city") received a request for a copy of the plan for a specified address. You inform us that you have released some of the requested information. You contend that the remaining requested information is excepted from public disclosure under section 552.101 of the Government Code. You also believe that the remaining information implicates the proprietary interests of a private third party, First Structure Tech, Inc. ("First Structure"). You notified First Structure of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> You also submitted the requested information. We have considered your arguments and have reviewed the submitted information.

We first note that an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 to submit its reasons, if any, as to why information relating to that party should not be released. *See Gov't Code* § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from First Structure. Thus, First Structure has not demonstrated that any of the submitted information is proprietary for purposes of section 552.110 of the Government Code. *See Gov't Code* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

---

<sup>1</sup>*See Gov't Code* § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances).

Next, we address the city's claim under section 552.101 of the Government Code. This section excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 protects information that other statutes make confidential. You contend that the submitted information is confidential under section 552.101 in conjunction with the Federal Copyright Act, title 17 of the United States Code. We agree that the submitted information appears to be protected by the copyright law. We note, however, that the copyright law does not make information confidential for purposes of section 552.101. *See* Open Records Decision No. 660 at 5 (1999) (Federal Copyright Act does not make information confidential, but rather gives copyright holder exclusive right to reproduce his work, subject to another person's right to make fair use of it.). Thus, the city may not withhold the submitted information under section 552.101 in conjunction with the copyright law. The city must permit inspection of copyrighted materials, unless an exception to disclosure is applicable to the information. *See* Attorney General Opinion JM-672 (1987). In doing so, however, the city also must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Id.* If a member of the public wishes to make copies of copyrighted materials, he or she 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 at 8-9 (1990). Thus, the city must make the submitted information available to the requestor, complying with copyright law in doing so.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

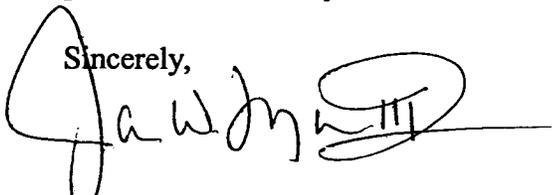
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 194065

Enc: Submitted documents

c: Mr. Don Arnold  
NAC Builders  
4613 Amherst Lane  
Grand Prairie, Texas 75052  
(w/o enclosures)

First Structure Tech, Inc.  
103 South Main  
Weatherford, Texas 76086  
(w/o enclosures)