



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 29, 2004

Mr. Lawrence G. Provins
Assistant City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581-5416

OR2004-0647

Dear Mr. Provins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195030.

The City of Pearland (the "city") received a request for blueprints for a specific residence. You claim that release of the requested information may implicate the proprietary interests of third parties under section 552.110 of the Government Code, although you take no position as to whether the information is so excepted. You state, and provide documentation showing, that you notified TSG Consultants, Gehan Homes, and Bloodgood Sharp Buster of the request and of their right to submit arguments to this office as to why the information should not be released. *See 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 act in certain circumstances). We have reviewed the submitted information.¹

¹We note that the submitted blueprints are labelled with an address different from the address specified by the requestor. Although you have not explained to this office how the submitted blueprints pertain to the request, we presume that the city has made a good-faith effort to relate the request to any relevant information within the city's possession or control and that the submitted information is therefore responsive. *See* Open Records Decision No. 561 at 8-9 (1990). We advise that with respect to any future requests for an open records decision from this office, the city should clarify how submitted information is responsive to the request if such a connection is not apparent from a review the information itself.

We note that 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 requested information relating to that party should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, TSG Consultants, Gehan Homes, and Bloodgood Sharp Buster have not submitted any comments to this office explaining how release of the requested information would affect its proprietary interests. Consequently, we have no basis to conclude that any of these third parties has a protected proprietary interest in any of the submitted information. See Gov't Code § 551.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). The submitted information must therefore be released to the requestor.

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,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 195030

Enc. Submitted documents

c: Mr. Daniel Gray
1806 ½ Banks Street #5
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(w/o enclosures)

TSG Consultants, Inc.
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Houston, Texas 77040
(w/o enclosures)

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Irving, Texas 75061
(w/o enclosures)

Bloodgood Sharp Buster
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Addison, Texas 75001
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