



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2006

Ms. Wendy E. Ogden  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2006-12908

Dear Ms. Ogden:

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# 263538.

The City of Corpus Christi (the "city") received a request for "pre-submittal notes, building permit and inspection information, other written building code-related communications, and all the plans and specifications that the [c]ity has" for buildings at three specified addresses.<sup>1</sup> You state that release of the requested information may implicate the proprietary interests of eight third parties.<sup>2</sup> Accordingly, you inform us that you notified the interested third parties of the request and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *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 in certain circumstances). We have reviewed the submitted information.

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<sup>1</sup>We note that the requestor has withdrawn her request for information related to a fourth address.

<sup>2</sup>The interested third parties are as follows: Design Forum Architects; Labunski Associates; Mr. Dennis T. Michell; Perkins General Contractors; Richter Architects; Villa Park Architects; Mr. Robert Villegas; and Wingstop Restaurants, Inc.

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 interested third parties have submitted to this office any arguments explaining why their information should not be released. We thus have no basis for concluding that any portion of the submitted information constitutes proprietary information, and none of it may be withheld on that basis. *See, e.g.*, Gov't Code § 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 (1990).

We note, however, that the submitted information includes portions that are excepted from disclosure under sections 552.130 and 552.137 of the Government Code.<sup>3</sup> Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. The city must withhold the Texas driver's license numbers we have marked under section 552.130.

Section 552.137 of the Government Code 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 have marked are not of a type specifically excluded by section 552.137(c). Unless the individuals whose e-mail addresses we have marked have consented to their release, they must be withheld under section 552.137.

We note that some of the remaining information includes notice of copyright protection. 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). Accordingly, in releasing the remaining information the city must release copyrighted information only in accordance with copyright law.

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<sup>3</sup>Unlike other exceptions to disclosure, this office will raise sections 552.130 and 552.137 on behalf of a governmental body, as these exceptions are mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

In summary, the city must withhold the driver's license numbers we have marked under section 552.130 of the Government Code and the e-mail addresses we have marked under section 552.137 of the Government Code. In releasing the remaining information, the city must release information protected by copyright in accordance with copyright law.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/dh

Ref: ID# 263538

Enc. Submitted documents

c: Ms. Jeri Morey  
711 North Carancahua, #518  
Corpus Christi, Texas  
(w/o enclosures)

Mr. Brady Harding  
Design Forum Architects  
7575 Paragon Road  
Dayton, Ohio 45459  
(w/o enclosures)

Labunski Associates  
3301 South Expressway 83, #A3  
Harlingen, Texas 78550  
(w/o enclosures)

Mr. Dennis T. Mitchell  
6031 I-20 West, Suite 260  
Arlington, Texas 76017  
(w/o enclosures)

Perkins General Contractors  
203 East Nakoma  
San Antonio, Texas 78216  
(w/o enclosures)

Mr. David Richter  
Richter Architects  
201 South Upper Broadway  
Corpus Christi, Texas 78414  
(w/o enclosures)

Mr. Mark Neville  
Villa Park Architects  
2553 Jackson-Keller Road, Suite 1  
San Antonio, Texas 78230  
(w/o enclosures)

Mr. Robert G. Villegas  
5817 Patton, Suite 104  
Corpus Christi, Texas 78414  
(w/o enclosures)

Mr. John Brent McDonald  
Architect  
Wingstop Restaurants, Inc.  
1101 East Arapaho Road, Suite 150  
Richardson, Texas 75081  
(w/o enclosures)