



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 15, 2009

Ms. Candice M. De La Garza  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2009-14585

Dear Ms. De La Garza:

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# 358388.

The City of Houston (the "city") received a request for the plans and drawings pertaining to a specified property. Although you take no position with respect to the public availability of the submitted information, you state that the submitted documents may contain proprietary information subject to exception under the Act. We have considered your comments and reviewed the submitted information.

Initially, you acknowledge that the city failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b), (e). The submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law, or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at

2 (1982). Because third-party interests may be at stake, we will consider whether any of the requested information must be withheld on those grounds.

You inform us that when the Public Works and Engineering Department - Code Enforcement Division (the "department") receives a request such as the instant request for plans and drawings that are sealed by an architect, engineer, or protected by copyright, the department informs the requestor of "such seals and protection." The department further requires the requestor to receive written consent from the architect or engineer of record before releasing the requested information. We note information is not confidential under the Act, however, simply because the party that submits the information anticipates or requests it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See Attorney General Opinion JM-672 (1987)*. Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Next, section 552.305 of the Government Code provides that if a governmental body believes that a request for information implicates a third party's privacy or proprietary interests, the governmental body may decline to release the requested information for the purpose of requesting an attorney general decision under section 552.301. *See Gov't Code § 552.305(a)*. Section 552.305(d) provides that if a third person's proprietary information may be protected from public disclosure under section 552.101, section 552.110, section 552.113, or section 552.131, the governmental body must make a good-faith attempt to provide written notice to the person of the governmental body's request for a decision and of the interested person's right to submit to the attorney general, not later than the tenth business day after the date of the person's receipt of the governmental body's notice, a statement of the reasons why the requested information should not be released. *See id.* § 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). In this instance, you inform us that the architects of record are deceased and their firm has been dissolved. Thus, the city has been unable to notify any third party of the request for information pursuant to section 552.305. Based upon your representations, we determine the city has made a good-faith attempt under section 552.305 of the Government Code. As we have no basis to conclude that a third party has a protected proprietary interest in the submitted information, we conclude the city may not withhold the information at issue based upon the proprietary interests of any third party. *See 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.

We note that some of the information at issue is 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. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials 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, as no exceptions to disclosure have been raised, the city must release the submitted information, but any information protected by copyright must 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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 358388

Enc. Submitted documents

---

cc: Requestor  
(w/o enclosures)