



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 4, 2010

Mr. David H. Guerra  
King, Guerra, Davis & Garcia  
P.O. Box 1025  
Mission, Texas 78573

OR2010-03184

Dear Mr. Guerra:

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# 371861.

The City of Mission (the "city"), which you represent, received a request for the floor plans of a church at a specified address. The city takes no position on the public availability of the requested information. You believe, however, that this request for information may implicate the interests of MB.ARC Architectural Resource Consultants, Inc. ("MB.ARC"). You inform us that MB.ARC was notified 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> We received correspondence from MB.ARC. We have considered MB.ARC's arguments and reviewed the submitted information.

We begin with MB.ARC's contention that only documents identified as "floor plans" are responsive to this request for information. We note that a governmental body must make a good-faith effort to relate a request for information to responsive records that are within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, the city informs us that it has submitted the information that is considered to be responsive to this request. Therefore, we will address MB.ARC's arguments against disclosure of all of the submitted information.

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

MB.ARC also asserts that the submitted information is the property of third parties, including MB.ARC; the architect of record; the church to which the information pertains; and consulting engineers. We note that the Act is applicable to "public information," which is defined as consisting of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); see Open Records Decision No. 462 at 4 (1987). The information at issue is held by the city. We understand that the city either collected or assembled and maintains the information at issue in connection with the transaction of official business. The submitted information is therefore subject to the Act and must be released unless it falls within the scope of an exception to disclosure. See Gov't Code §§ 552.002, .006, .021.

MB.ARC contends that the submitted information is excepted from disclosure under sections 552.101, 552.110, 552.113, and 552.131 of the Government Code. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception protects information that is considered to be confidential under other constitutional, statutory, or decisional law. See Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). MB.ARC argues that the information at issue implicates privacy interests. Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy protects the interests of individuals, however, and not those of business and governmental entities. See Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); see also *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). MB.ARC has not demonstrated that any of the information at issue is protected by common-law privacy under section 552.101. Likewise, MB.ARC has not directed our attention to any

other law under which any of the information at issue is considered to be confidential for the purposes of section 552.101. We therefore conclude that the city may not withhold any of the submitted information under section 552.101 of the Government Code.

Section 552.110 of the Government Code protects the proprietary interests of third parties with respect to two types of information: “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision” and “commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.” Gov’t Code § 552.110(a)-(b).

The Supreme Court of Texas has adopted the definition of a “trade secret” from section 757 of the Restatement of Torts, which holds a “trade secret” to be

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees . . . . A trade secret is a process or device for continuous use in the operation of the business . . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); see *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958). This office will accept a private person’s claim for exception as valid under section 552.110(a) if the person establishes a *prima facie* case for the exception, and no one submits an argument that rebuts the claim as a matter of law.<sup>2</sup> See

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<sup>2</sup>The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company’s] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Open Records Decision No. 552 at 5 (1990). We cannot conclude, however, that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999).

In this instance, MB.ARC has not made a *prima facie* demonstration that any of the information at issue constitutes a trade secret under section 552.110(a). *See* RESTATEMENT OF TORTS § 757 cmt. b (trade secret “is not simply information as to single or ephemeral events in the conduct of the business”). Likewise, MB.ARC has not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of the information at issue would cause MB.ARC substantial competitive harm. *See* ORD 661 at 5-6 (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm). We therefore conclude that the city may not withhold any of the submitted information under section 552.110 of the Government Code.

Section 552.113 of the Government Code protects certain geological, geophysical, and other information regarding the exploration or development of natural resources. *See* Gov't Code § 552.113; *see generally* Open Records Decision No. 627 (1994). MB.ARC has not demonstrated that this exception is applicable to any of the information at issue. Therefore, the city may not withhold any of the submitted information under section 552.113 of the Government Code.

Section 552.131 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131(a)-(b). Section 552.131(a) excepts from disclosure only "trade secret[s] of [a] business prospect" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." *Id.* Thus, the protection provided by section 552.131(a) is co-extensive with that afforded by section 552.110 of the Government Code. *See id.* § 552.110(a)-(b); ORD 552, 661. Therefore, because we have already determined that section 552.110 of the Government Code is not applicable to any of the information at issue, the city may not withhold any of the submitted information under section 552.131(a) of the Government Code.

Section 552.131(b) protects information relating to a financial or other incentive that is being offered to a business prospect by a governmental body or another person. *See Gov't Code § 552.131(b).* This aspect of section 552.131 protects the interests of governmental bodies, not those of third parties. Therefore, because the city does not claim this exception, none of the submitted information may be withheld under section 552.131(b) of the Government Code.

We also understand MB.ARC to contend that the submitted information is protected by copyright law. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See Attorney General Opinion JM-672 (1987).* An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information 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).*

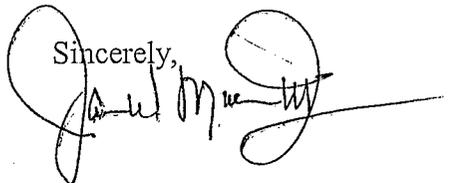
In summary, the submitted information must be released in its entirety, but any information that is protected by copyright may only be released in accordance with copyright law.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized with large loops and a long horizontal stroke extending to the right.

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

JWM/cc

Ref: ID# 371861

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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