



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2011

Ms. Susan Camp-Lee
Sheets & Crossfield, P.C.
309 East Main Street
Round Rock, Texas 78664-5246

OR2011-06008

Dear Ms. Camp-Lee:

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# 416140.

The City of Round Rock (the "city"), which you represent, received a request for all proposals submitted in response to a request for bids for a Play For All playground. Although you take no position on the public availability of the submitted information, you state the information at issue may implicate the proprietary interests of several third parties. Accordingly, you submit documentation showing you notified these third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.¹ See Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have reviewed the submitted information.

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) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not

¹The notified third parties are: BYO Playground; Creative Components; Game Time; Kompan, Inc.; Little Tikes Commercial, Inc.; Noah's Park & Playgrounds; Play and Park Structures; Playcore; Recreation Consultants of Texas, L.L.C.; T.F. Harper & Associates, L.P.; and webuildfun, Inc.

received arguments from any of the notified third parties. We, thus, have no basis for concluding any portion of the submitted information constitutes proprietary information of the notified third parties. *See id.* § 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. Accordingly, the city may not withhold any of the submitted information based on the proprietary interests of any of the notified third parties.

We note some of the submitted information appears to be 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. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). 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. As no arguments have been made against the disclosure of the submitted information, it must be released to the requestor, 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, 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 416140

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: Ms. Kerry Hoff
BYO Playground
101 East Town Place, Suite 650
St. Augustine, Florida 32092
(w/o enclosures)

Ms. Valerie Grimm
Creative Components
1080 Peale Road
Wimberley, Texas 78676
(w/o enclosures)

Ms. Preben B. Pedersen
Kompan, Inc.
930 Broadway
Tacoma, Washington 98402
(w/o enclosures)

Mr. Kevin Rambaud, CPSI
Little Tikes Commercial, Inc.
5508 Scout Island Circle S.
Austin, Texas 78731
(w/o enclosures)

Ms. Dora Abdouch
Noah's Park & Playgrounds
P.O. Box 763
Round Rock, Texas 78681
(w/o enclosures)

Mr. Rob Meckel
Play and Park Structures
3243 Nacogdoches #1306
San Antonio, Texas 78217
(w/o enclosures)

Playcore
401 Chestnut Street Suite 310
Chattanooga, Tennessee 37402
(w/o enclosures)

Ms. Tracy Edgar
Recreation Consultants of Texas, LLC
11660 Plano Road
Dallas, Texas 75243
(w/o enclosures)

Ms. Elayne Haynes
T.F. Harper & Associates, L.P.
103 Red Bird Lane
Austin, Texas 78745
(w/o enclosures)

Ms. Linda Tyler, CPSI
webuildfun, Inc.
P.O. Box 29
Allen, Texas 75013
(w/o enclosures)

Mr. Jeff Mankins
Game Time
12022 Knigge Cemetery Road, Suite C
Cypress, Texas 77429
(w/o enclosures)