



January 7, 2015

Mr. Darrell Davis
For the City of Palmhurst
King, Guerra, Davis & Garcia
P.O. Box 1025
Mission, Texas 78573

OR2015-00221

Dear Mr. Davis:

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# 549158.

The City of Palmhurst (the "city"), which you represent, received a request for copies of all applications for permits, plans, and permits for a specified address. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the information may implicate the proprietary interests of Maranatha Designs ("Maranatha") and Pena Engineering ("Pena"). Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 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). We have received comments from Maranatha. We have reviewed the submitted arguments and 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) 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, we have not received comments from Pena explaining why the submitted information should not be released. Therefore, we have no basis to conclude Pena has a protected proprietary interest in the submitted information. *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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the city may not withhold any of the submitted information on the basis of any proprietary interest Pena may have in the information.

Maranatha argues the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with copyright law. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, copyright law does not make information confidential. *See* Open Records Decision No. 660 at 5 (1999). 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. Accordingly, the city may not withhold any of the submitted information under section 552.101 in conjunction with copyright law. As Maranatha raises no other exceptions to disclosure, the submitted information may be released only 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Daniel Olds
Assistant Attorney General
Open Records Division

DO/akg

Ref: ID# 549158

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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