



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2015

Mr. Ryan D. Pittman
Counsel for the City of Frisco
Abernathy Roeder Boyd & Hullett, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2015-06100

Dear Mr. Pittman:

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# 558087.

The City of Frisco (the "city"), which you represent, received a request for information pertaining to a specified project, including (1) soils reports or other geotechnical engineering documents; (2) development documents related to water flow, drainage, and retaining walls; (3) elevation maps; (4) water supply and drainage utility maps; (5) foundation and framing plans pertaining to a specified address; and (6) building inspection defects pertaining to a specified address. Although you take no position with respect to the public availability of the requested information, you state the proprietary interests of third parties might be implicated. Accordingly, you inform us, and provide documentation showing, you notified Shaddock Development Company, Spiars Engineering, and D&E Structures Consulting Engineers, LLP of the request and of their rights to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *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 under the Act in 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) to submit its reasons, if any, as to why

requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from any third parties explaining why their information should not be released to the requestor. Therefore, we have no basis to conclude any of the third parties have protected proprietary interests in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating business enterprise claiming exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Accordingly, the city may not withhold the submitted information on the basis of the proprietary interests the third parties may have in the information.

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).¹ Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked are not of a type excluded by subsection (c). Accordingly, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release.

We note portions of the remaining information may 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.

In summary, the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. The city must release the remaining information; however, any information that is subject to copyright 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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 558087

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Will Shaddock
Shaddock Development Company
19111 Dallas Parkway, Suite 230
Dallas, Texas 75287
(w/o enclosures)

Mr. Tim Spiars
Spiars Engineering
765 Custer Road, Suite 100
Plano, Texas 75075
(w/o enclosures)

Mr. Steven Dickson, P.E.
D&E Structures Consulting Engineers, LLP
1010 East Arapaho Road, Suite 106
Richardson, Texas 75081
(w/o enclosures)