



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 3, 2015

Ms. Veronica Lomas  
Records Manager  
City of Southlake  
1400 Main Street, Suite 270  
Southlake, Texas 76092

OR2015-10909

Dear Ms. Lomas:

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# 565767.

The City of Southlake (the "city") received a request for permits, house plans, engineering records, and inspection records pertaining to a specified address. Although you take no position with respect to the public availability of the submitted information, you state release of this information may implicate the proprietary interests of Dowdy Land Surveyors, Inc. ("Dowdy"); Heritage Design Studio ("Heritage"); Lone Star Truss ("LST"); and Whitworth Engineering ("Whitworth"). Accordingly, you state, and provide documentation showing, the city notified these 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 (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 the circumstances). We have received comments from Dowdy. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have not submitted any permits or inspection records for our review. To the extent any information responsive to these portions of the request existed when the city received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See Gov't Code* §§ 552.006, .301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note 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 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 Heritage, LST, or Whitworth explaining why the submitted information should not be released. Therefore, we have no basis to conclude Heritage, LST, and Whitworth have protected proprietary interests 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, 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 the submitted information on the basis of any proprietary interests Heritage, LST, or Whitworth may have in the information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by other statutes. Dowdy objects to the release of its submitted information, consisting of a property survey, because "any electronic disclosure of the [s]urvey would be a violation of the general rules and procedures of the Texas Board of Professional Land Surveying that requires surveys to have the surveyor's original seal and signature." In support of its assertion, Dowdy cites to section 663.19(d) of title 22 of the Texas Administrative Code, which provides "[t]he survey drawing shall bear the [f]irm name and [f]irm [r]egistration [n]umber, the land surveyor's name, address, and phone number who is responsible for the land survey, his/her official seal, his/her original signature . . . , and date surveyed." 22 T.A.C. § 663.19(d). For information to be confidential under section 552.101, a statute must explicitly require confidentiality; confidentiality will not be inferred. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (as general rule, statutory confidentiality requires express language making information confidential), 465 at 4-5 (1987). Section 663.19(d) sets out what must be on a survey drawing. However, section 663.19(d) does not make information confidential for purposes of the Act. Therefore, the city may not withhold Dowdy's submitted information under section 552.101 of the Government Code in conjunction with section 663.19(d) of title 22 of the Texas Administrative Code.

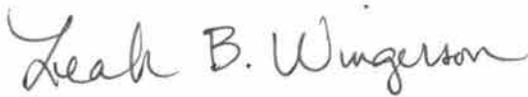
The city asserts the submitted information, and Dowdy asserts its information, is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body 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. Thus, the city must release the submitted information, but may only release any copyrighted information 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](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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/bhf

Ref: ID# 565767

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Heritage Design Studio  
6212 Pecan Ridge  
North Richland Hills, Texas 76180  
(w/o enclosures)

Whitworth Engineering  
4200 North Main Street, Suite 150  
Fort Worth, Texas 75106  
(w/o enclosures)

Dowdy Land Surveyors  
c/o Mr. C.J. de Vilder, Jr.  
Dorsett Johnson & Swift  
109 East Third Street, Suite 350  
Fort Worth, Texas 76102  
(w/o enclosures)

Lone Star Truss  
P.O. Box 1538  
Mabank, Texas 75147  
(w/o enclosures)