



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 25, 2016

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

OR2016-11992

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# 611615.

The City of Southlake (the "city") received a request for plans and survey documents related to two specified addresses. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of this information may implicate the proprietary interests of All Truss Building Systems Inc., AREA Surveying Company, DeOtte, Inc., Garabedian Properties, Hatfield Custom Homes, Home Q Designs, Loyd Bransom Surveyors Inc., and Whitworth Engineering. Accordingly, you state you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue 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 reviewed the submitted representative sample of information.¹

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially we note some of the submitted information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-04566 (2015) and 2015-02461 (2015). In those rulings, we determined the city must release the information at issue in accordance with any applicable copyright law. We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, to the extent the submitted information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter Nos. 2015-04566 and 2015-02461 as previous determinations and release the identical information at issue in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the submitted information is not subject to the previous rulings, we will consider the public availability of the information at issue.

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 any third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude any third party 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, 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 interest any third party may have in the information.

We note the submitted 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, to the extent the submitted information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter Nos. 2015-04566 and 2015-02461 as previous determinations and release the identical information at issue in accordance with those rulings. The city must release the remaining

information; however, any information 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.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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bw

Ref: ID# 611615

Enc. Submitted documents

c: Requestor
(w/o enclosures)

8 Third Parties
(w/o enclosures)