



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 19, 2015

Mr. L. Brian Narvaez
Counsel for the City of Eagle Pass
Langley & Banack Incorporated
401 Quarry Street
Eagle Pass, Texas 78852

OR2015-09654

Dear Mr. Narvaez:

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# 564240 (Request #2015-025).

The City of Eagle Pass (the "city"), which you represent, received a request for information pertaining to a specified funeral home, including permits, "all minutes regarding the crematory service establishment," and "the model unit crematory on site." You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. Additionally, you state the release of the submitted information may implicate the proprietary interests of Richard N. Lane & Associates, Terratech Engineering and Construction Services, and Matthews International Cremation Division. Accordingly, you state, and provide 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. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exceptions to disclosure under the Act in certain circumstances). We have considered the exceptions you claim and 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 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 any of the interested third parties explaining why their information should not be released. Therefore, we have no basis to conclude any of the third parties have 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 any of the submitted information on the basis of any proprietary interest any of the interested third parties may have in the information.

You claim the submitted information is excepted from disclosure under section 552.110 of the Government Code, which protects (1) trade secrets, and (2) commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110. However, section 552.110 is designed to protect the interests of third parties, not the interests of a governmental body. *See generally* Open Records Decision No. 592 (1991). Thus, we do not address your argument under section 552.110 of the Government Code.

You state the submitted information is or may be protected by copyright law under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. We understand you to claim the submitted information is confidential under the Federal Copyright Act, title 17 of the United States Code. However, copyright law does not make information confidential for purposes of section 552.101. Open Records Decision No. 660 at 5 (1999) (Federal Copyright Act does not make information confidential, but rather gives copyright holder exclusive right to reproduce his work, subject to another person's right to make fair use of it.). Thus, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with copyright law. A custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). However, 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 you raise no other exceptions to disclosure, the submitted information must be released; however, the city may only release the information subject to copyright 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 564240

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Richard N. Lane & Associates
2606 Encino Park Drive
Eagle Pass, Texas 78852
(w/o enclosures)

Terratech Engineering and Construction Services
940 Ceylon Street
Eagle Pass, Texas 78852
(w/o enclosures)

Mathews International Cremation Division
2045 Spring Boulevard
Apopka, Florida 32703
(w/o enclosures)