



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2017

Ms. Criselda Palacios
City Attorney
City of Edinburg
P.O. Box 1079
Edinburg, Texas 78540-1079

OR2017-20573

Dear Ms. Palacios:

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# 674798.

The City of Edinburg (the "city") received a request for the plans for a specified address. You claim the submitted information may be protected by copyright. Additionally, you state release of the submitted information may implicate the proprietary interests of Barrera Infrastructure Group; Chris Ryan Homes & Investments; and Distinctive Drafting & Design, LLC ("Distinctive"). 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 Distinctive, which asserts its information is protected under copyright law. We have considered the submitted arguments and 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 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 only received comments from Distinctive explaining why the submitted information should not be released. Therefore, we have no basis to conclude either of the remaining third parties has a protected proprietary

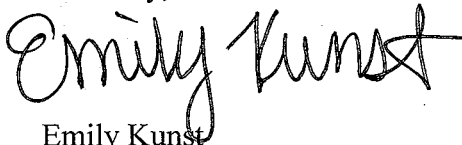
interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would 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 either of the remaining third parties may have in the information.

You and Distinctive state, and we agree some of the submitted information may be protected by copyright law. However, we note copyright law does not make information confidential under the Act. *See generally* Open 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). Nevertheless, 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. As there are no further arguments against disclosure of the submitted information, it must be released; however, any information subject to 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,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive, flowing style.

Emily Kunst
Attorney
Open Records Division

EK/gw

Ref: ID# 674798

Enc. Submitted documents

c: Requestor
(w/o enclosures)

c: 3 Third Parties
(w/o enclosures)