



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 16, 2019

Ms. Mandy Roberson
Records Specialist
City of Katy
P.O. Box 617
Katy, Texas 77492-0617

OR2019-29072

Dear Ms. Roberson:

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# 779753 (ORR# COK-ORR-376-2019).

The City of Katy (the "city") received a request for blueprints and building plans related to a specified address. Although the city takes no position as to whether the submitted information is excepted under the Act, the city states release of the submitted information may implicate the proprietary interests of DPSI Engineering ("DPSI") and Lennar Homes ("Lennar").¹ Accordingly, the city states, and provides documentation showing, it notified DPSI and Lennar of the request for information and of the right 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). Further, the city provided copies of comments from DPSI and Lennar.² We have reviewed the submitted arguments and the submitted information.

¹ The city did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because third-party interests can provide a compelling reason to overcome the presumption of openness, we will consider the submitted arguments against release of the submitted information. *See id.* §§ 552.007, .302, .352.

² Lennar states Lennar "cannot release the plans." However, Lennar has provided no arguments and raised no exceptions to provide any basis for withholding the information at issue. Accordingly, we do not consider Lennar's interest in withholding the submitted information.

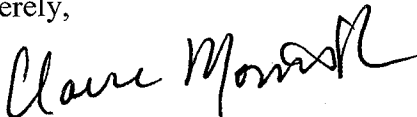
DPIS raises section 552.101 of the Government Code for the submitted information. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. However, DPIS has not pointed to any confidentiality provision, nor are we aware of any, that would make any of the submitted information confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code.

DPIS also argues the materials at issue are 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. Therefore, the city must release the submitted 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.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 779753

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)