



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 8, 2022

Ms. Aliceson Cotton
Counsel for the City of Frisco
Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Boulevard, Suite 300
McKinney, Texas 75069

OR2022-23536

Dear Ms. Cotton:

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# 961896 (Ref. Nos. G057581 and G059099).

The City of Frisco (the "city"), which you represent, received two requests from different requestors for plans pertaining to a specified business at a stated address.¹ Although the city takes no position regarding whether the submitted information is excepted from disclosure under the Act, the city informs us its release may implicate the proprietary interests of Applebee's International, Inc. ("Applebee's"). Accordingly, the city states, and provides documentation showing, it notified Applebee's of the requests for information and of its right to submit arguments to this office.² *See* Gov't Code § 552.305(d); *see also* Open

¹ You state the city sent the first requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the first requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You also inform us the city received the required payment on May 2, 2022. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

² We note we asked the city to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the information submitted by the city pursuant to that request.

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 information.

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) 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 Applebee's explaining why the information at issue should not be released. Thus, we have no basis to conclude Applebee's has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Therefore, the city may not withhold the submitted information on the basis of any proprietary interest Applebee's may have in the information.

We note some of 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. Accordingly, the city must release the submitted information; 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 <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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jm

Ref: ID# 961896

Enc. Submitted documents

c: Requestors
(w/o enclosures)

Third Party
(w/o enclosures)