



July 18, 2000

Ms. Ann Dillon
General Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2000-2695

Dear Ms. Dillon:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137231.

The General Services Commission (the "commission") received a request for a copy of each of the proposals submitted by seven named companies in response to Request for Offer number 303-0-0254. You state that without taking a position on the public nature of the submitted materials, the commission requests a ruling from this office regarding the disclosure of the requested proposal submitted to the commission by American Management Systems (the "company").¹

The material you submitted reflects that, pursuant to section 552.305 of the Government Code, the company was notified of the instant request on May 16, 2000. To date, this office has received no communication from the company as to why its information is excepted from required public disclosure. See Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Consequently, we have no basis for finding that the proposal may be withheld.

¹With the exception of the proposal submitted by American Management Systems, the information requested was addressed in Open Records Letter Ruling No. 2000-1931 (2000). Because you have only submitted documents pertaining to the proposal submitted by American Management Systems, we assume that you have released the rest of the responsive information, except that information you were authorized to withhold under our previously issued ruling. If not, you must do so at this time. Gov't Code § 552.301(f).

The commission specifically seeks our opinion as to the effect of any copyright restrictions that may apply to the submitted proposal. This office has stated that a custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). However, a governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* 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. *See* Open Records Decision No. 550 (1990). Therefore, we conclude that, to the extent the submitted information is copyrighted, the commission must make the information available to the requestor, but must not assist in copying the information. The documents must otherwise be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

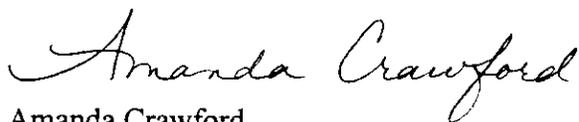
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/nc

Ref: ID# 137231

Encl. Submitted documents

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