



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 6, 2004

Ms. Amy L. Sims  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457-2000

OR2004-2763

Dear Ms. Sims

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198806.

The City of Lubbock (the "city") received three requests for information pertaining to a recent request for proposals for a self-check library system. The city raises sections 552.101, 552.110 and 552.305 of the Government Code, but takes no position and makes no arguments with regard to whether the requested information is excepted from disclosure. Rather, the city defers to the entities which the city believes may have a proprietary interest in the requested information, namely, 3M Library Systems, Vernon, and Libramation.<sup>1</sup> We have reviewed the submitted information.

We first note that one of the requestors has submitted his request as a series of questions to the city. In responding to a request for information under chapter 552 of the Government Code, a governmental body is not required to answer factual questions, conduct legal research, or create new information. *See* Open Records Decision Nos. 563 at 8 (1990), 555

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<sup>1</sup>Although you do not so state, we assume the city notified these three companies of the request for information and of their right to submit arguments to this office against release of the requested information. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).

at 1-2 (1990). Likewise, chapter 552 does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request for it. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). However, a governmental body must make a good-faith effort to relate a request for information to any responsive information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

Next, we note that pursuant to section 552.305 of the Government Code, an interested third party is given ten business days from the date of its receipt of the governmental body's notice to submit to this office its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from 3M Library Systems, Vernon, or Libramation. Thus, these entities have not demonstrated that any of the submitted information is proprietary for purposes of section 552.110 of the Government Code. *See* Gov't Code § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Although the city also raises section 552.101 of the Government Code as an exception to disclosure, you have made no arguments in support of this exception, nor are we aware of any law that would make the submitted information confidential.<sup>2</sup> Therefore, the information you have submitted as Exhibit B must be released to the requestors in its entirety.

We note, however, that some of the materials at issue 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. Attorney General Opinion JM-672 (1987). 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).

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

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<sup>2</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 198806

Enc: Submitted documents

c: Mr. Shawn Brumley  
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P .O. Box 33682  
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(w/o enclosures)

Mr. Darrell F. Lindstrom  
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