



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2004

Mr. Robert Underwood
City Attorney
City of Carthage
P. O. Box 1138
Carthage, Texas 75633

OR2004-5214

Dear Mr. Underwood:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204300.

The City of Carthage (the "city") received a request for the following information regarding the city's Water Department over a specified time period: 1) the Water Department Adjustment log; 2) a computer program by STW, Inc. ("STW"); 3) a copy of adjustments made; 4) the amount of money paid to the Water Department; and 5) policies and procedures for city officials and employees. We understand that the city has made information responsive to categories 1, 3, 4, and 5 available to the requestor.¹ However, you claim that the requested computer program, category 2 of the request, is not public information subject to the Public Information Act (the "Act"). Alternatively, you claim that the requested computer program is excepted from disclosure under section 552.139 of the Government Code.² Additionally, you indicate that the city has notified STW, an interested third party, of the request for information pursuant to section 552.305 of the Government Code. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990)

¹To the extent that any additional requested information exists, we assume it has been released. If not, you must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

²Although section 552.136 of the Government Code is asserted concerning information related to security issues for computers, the 78th Legislature recently renumbered that provision as section 552.139. *See Act of May 21, 2003, 78th Leg., R.S., ch. 1275, § 2(76), 2003 Tex. Sess. Law Serv. 4144 (Vernon).*

(determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). You have submitted STW's comments to this office. We have considered the submitted arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, we address your arguments that the submitted computer program is not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer-related information that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, such as source codes, documentation information, and other computer programming, is not the kind of information that is made public under section 552.021 of the Act. *Id.* at 6. You assert that "the software program is a tool or key" and that it is related to the design and operation of a computer network. Based on your representations and our review of the information at issue, we conclude that the submitted computer program does not constitute public information for the purposes of section 552.002 of the Act. Therefore, this computer program is not subject to disclosure under section 552.021 of the Act, and it need not be released.³

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

³As our ruling on this issue is dispositive, we need not address the remaining arguments.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 204300

Enc: Submitted documents

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