



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2007

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

OR2007-03832

Dear Ms. Sims:

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# 275185.

The City of Lubbock (the "city") received a request for information pertaining to a specified bid. Although you take no position with respect to the submitted information, you claim that the submitted information may contain proprietary information subject to exception under the Act. You state, and provide documentation showing, that you notified the interested third parties of the city's receipt of the request for information and of each company's right to submit arguments to this office as to why the requested information should not be released to the requestor.¹ *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). We have reviewed the submitted information.

Initially, we note that the submitted information contains two resolutions adopted by the city council. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records

¹The interested third parties are K.W. Sharp, Inc., Master Meter, Inc., Morrison Supply, Wachs Utility Services, and Western Industrial Supply.

Decision No. 221 at 1 (1979) (“official records of the public proceedings of a governmental body are among the most open of records”); *see also* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). The submitted resolutions are analogous to ordinances. Accordingly, the city must release the submitted resolutions, which we have marked.

Next, we note that 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 requested information relating to it should be withheld from disclosure. *See* Gov’t Code § 552.305(d)(2)(B). As of the date of this letter, no interested third party has submitted to this office any reasons explaining why the requested information should not be released. Therefore, these companies have failed to provide us with any basis to conclude that they have a protected proprietary interest in any of the submitted information, and none of the information may be withheld on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, none of the remaining information may be withheld based on the proprietary interest of these companies, and must be released to the requestor.

We note that some of the information includes notice of copyright protection. 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 materials that are subject to copyright protection 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).

In summary, the city must release the city council resolutions, which we have marked. The remaining submitted information must be released to the requestor, but any copyrighted information may only be released in accordance with copyright law.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read 'Holly R. Davis', with a long horizontal flourish extending to the right.

Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 275185

Enc. Submitted documents

c: Ms. Nicole Praner
Wachs Utility Services
600 Knightsbridge Parkway
Lincolnshire, Illinois 60069
(w/o enclosures)

Ms. Kim McGuire
Western Industrial Supply
2406 Erskine
Lubbock, Texas 79415
(w/o enclosures)

Mr. Tommy Overstreet
Morrison Supply
141 East 42nd Street
Lubbock, Texas 79404
(w/o enclosures)

Mr. Mike Worthington
K. W. Sharp, Inc.
325 East 40th Street
Lubbock, Texas 79404
(w/o enclosures)

Mr. Ronnie Veach
Master Meter, Inc.
101 Regency Parkway
Mansfield, Texas 76063
(w/o enclosures)