



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

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Ms. Valerie Coleman-Ferguson
Associate General Counsel
University of Houston System
311 E. Cullen Building
Houston, Texas 77204

OR2007-05239

Dear Ms. Coleman-Ferguson:

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# 277775.

The University of Houston (the "university") received a request for seven categories of information, including "any completed estimate, all working papers, research material, and information used to estimate the need for or expenditure of public funds" regarding academic research programs in partnership with Texas Medical Center. You state that you have released the majority of the requested information to the requestor. You claim that the university does not maintain a portion of the remaining requested information. You inform us that DJW Associates ("DJW"), a consultant retained by the university, maintains the remaining information sought by the requestor. Thus, you claim that this information is not subject to the Act. We have considered your arguments.

The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *See* Gov't Code § 552.002. Thus, virtually all information in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a)(1); *see also* Open

Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Likewise, the Act is applicable to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for a governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see also* Open Records Decision No. 462 at 4 (1987) (Act applies to information collected or maintained by consultant if information relates to governmental body's official duties or business, consultant acts as agent of governmental body in collecting information, and governmental body has or is entitled to access to information). However, the Act does not require a governmental body to release information if the governmental body that receives the request has neither possession of the information nor a right of access to it. *See* Open Records Decision Nos. 534 at 2-3 (1989), 518 at 2-3 (1989).

In Open Records Decision No. 445 (1986), this office addressed whether notes and information acquired by an outside consultant in preparation of a report were "public information" for purposes of the Act. In that open records decision, the consultant contracted with the governmental body to provide a comprehensive written report to the governmental body. *Id.* However, the contract did not provide the governmental body access to notes and information acquired by the consultant in preparation of the report. *Id.* Furthermore, the governmental body indicated that it did not possess the information and did not know the contents of the information. *Id.* This office held that the notes and information acquired by the consultant in preparation of the report were not "public information" for purposes of the Act, and thus not required to be disclosed. *Id.*

You indicate that the requested information at issue consists of source materials used by DJW to prepare an April 2006 report. You inform us that the report has been released to the requestor. However, you state that the university did not collect, assemble, or maintain the source materials used by DJW to prepare the report. Further, you state that the university does not own or have a right of access to this information. In support of this contention, you have submitted the university's consulting services agreement with DJW, which includes the following provision: "the University has no rights in the products, materials, tools and methodologies that are proprietary to the consultant or third parties." Upon review of your arguments, we find that the remaining requested information relating to DJW's source material does not constitute "public information" of the university. Thus, the university is not required to disclose this information under chapter 552 of the Government Code.

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,



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Assistant Attorney General
Open Records Division

DKL/eeg

Ref: ID# 277775

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