



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 2, 2008

Ms. Yvette Aguilar  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2008-07424

Dear Ms. Aguilar:

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# 311419.

The City of Corpus Christi (the "city") received a request for 1) "all agenda documents given to the members of the Building Code Board of Appeals and any other information shown to any individual board members before the scheduled meeting on March 27, 2008" and, 2) "any drawings or other information presented to the board during the meeting by [third parties]." You assert that the second portion of the request constitutes a standing request with which the city need not comply. In the alternative, you raise section 552.110 of the Government Code as a possible exception to disclosure for some of the requested information, but make no arguments and take no position regarding the applicability of this exception. Instead, you state that the request may involve third party proprietary interests and provide documentation showing that you notified Apex Engineers & Consultants, Inc. and Rockford Manufacturing, Ltd. of the request for information and of their opportunity to submit comments to this office. *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) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered your arguments and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that you have not submitted the requested agenda documents for our review. To the extent any other information responsive to the request existed on the date the city received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we address your assertion that the second portion of this request seeks access to information that did not exist on the date of the city's receipt of the request. We note that it is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975). You state that on the date that the request for information was received, the city did not possess any information that was responsive to the second portion of the request. Accordingly, we conclude that the city is not required to comply with this portion of the request, and need not release any information to the requestor in response to this portion of the request. However, to the extent that the submitted information is responsive to the first part of the request, we will address the remaining arguments against disclosure.

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) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Apex or Rockford explaining how the release of the submitted information will affect their proprietary interests. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the proprietary interests of either company. *See, e.g.,* Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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). Thus, none of the submitted information may be withheld based on the proprietary interests of either Apex or Rockford. Accordingly, the city must release any submitted responsive information to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/mcf

Ref: ID# 311419

Enc. Submitted documents

c: Ms. Jeri L.S. Morey  
711 North Carancahus, #518  
Corpus Christi, Texas 78475  
(w/o enclosures)

Mr. Richard K. Joyce  
Rockford Manufacturing, Ltd.  
504 Thunderbolt Drive  
Walterboro, South Carolina 29488  
(w/o enclosures)

Mr. Roger B. Thomas  
Apex Engineers & Consultants, Inc.  
1314 Santa Fe Street  
Corpus Christi, Texas 78408  
(w/o enclosures)