



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2008

Ms. Patricia Fleming
Assistant General Counsel
Texas Department of Criminal Justice
Office of the General Counsel
P.O. Box 4004
Hunstville, Texas 77342-4004

OR2008-15689

Dear Ms. Fleming:

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# 327820.

The Texas Department of Criminal Justice (the "department") received a request for a specific attachment that concerns 3M Company's ("3M") Production Data Management System and Digital License Plate System. Although you raise no exception to disclosure on your own behalf, you indicate that release of the submitted information may implicate the proprietary interests of a third party. Pursuant to section 552.305 of the Government Code, you notified 3M of the request and of its opportunity to submit comments to this office explaining why the submitted information should be withheld from disclosure. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* 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 comments submitted by the requestor's attorney and reviewed the submitted information. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We note that an interested third party is allowed ten business days from the date of its receipt of a governmental body's notice under section 552.305 of the Government Code to submit

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 letter, 3M has not submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Thus, 3M has not provided any basis from which to conclude that release of any portion of the submitted information would implicate its proprietary interests. *See id.* § 552.110; Open Records Decision No. 552 at 5 (party must establish prima facie case that information is trade secret), 661 at 5-6 (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). We, therefore, conclude that the department may not withhold any portion of the submitted information based on the proprietary interests of 3M. Accordingly, the submitted information must be released 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). If the governmental body does not file suit over 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/ma

Ref: ID# 327820

Enc. Submitted documents

cc: Requestor
(w/o enclosures)