



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2010

Ms. Jameene Yvonne Banks  
Denton, Navarro, Rocha & Bernal  
Attorneys and Counselors  
2517 North Main Avenue  
San Antonio, Texas 78212

OR2010-06102

Dear Ms. Banks:

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# 377438.

The City of Garden Ridge (the "city"); which you represent, received a request for any agendas, reports, minutes, and tape recordings of a specified meeting of the city's quarry commission. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure.<sup>1</sup> You also state the request may implicate the rights of the third party whose information has been requested. Accordingly, you state, and provide documentation showing, that you have notified Vibra-Tech of its right to submit arguments to this office as to why its submitted information should not be released. *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 considered your arguments and reviewed the submitted information.

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<sup>1</sup>You inform us that you no longer assert the remaining exceptions you raised in your initial correspondence with our office. In addition, although you raise section 552.022 of the Government Code, we note that section 552.022 is not an exception to disclosure, but a list of categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022.

Initially, we note 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 it should be withheld from disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received correspondence from Vibra-Tech explaining why its information should not be released. Thus, we have no basis for concluding that any portion of the submitted information pertaining to Vibra-Tech constitutes proprietary information, and the city may not withhold any portion of its information on that basis. *Cf.* 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.

Next, we note that you have not submitted the requested agenda or minutes. To the extent such information existed on the date the city received this request, we presume the city has released it. If not, the city must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (providing for prompt release of information that is not excepted from public disclosure).

We next note that the Exhibit E consists of audio tape recordings of an open meeting of the city quarry commission.<sup>2</sup> Section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly provides that the "minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee." Gov't Code § 551.022. Information that is specifically made public by statute may not be withheld from the public under any of the exceptions to public disclosure in chapter 552 of the Government Code. *See, e.g.,* Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Thus, the city may not withhold Exhibit E under any of the claimed exceptions and must release this information to the requestor.

You contend that portions of Exhibit D are excepted from disclosure pursuant to federal copyright law; however, we note copyright law does not make information confidential. *See* Open Records Decision No. 660 at 5 (1999). A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* 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).

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<sup>2</sup>You have submitted two audio recordings of the same meeting labeled Exhibits E and E-1. We will refer to both recordings as Exhibit E.

In summary, the submitted information must be released. However, any information that is copyrighted may only be released in accordance with copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/cc

Ref: ID# 377438

Enc. Submitted documents

c: Requestor  
(w/o enclosures)