



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2011

Ms. Jameene Y. Banks
Denton, Navarro, Rocha & Bernal, PC
2517 North Main Avenue
San Antonio, Texas 78212

OR2011-05425

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# 414917.

The City of Garden Ridge (the "city"), which you represent, received a request for blasting data and reports for a January 25, 2011 blast at a specified quarry. You claim the submitted information is protected by copyright law.¹ You also claim release of the submitted information would implicate the proprietary interests of Vibra-Tech Engineers, Inc. ("Vibra-Tech"). Thus, pursuant to section 552.305 of the Government Code, you notified Vibra-Tech of the request and of the company's right to submit arguments to this office as to why its information should not be released. Gov't Code § 552.305(d); *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 under in certain circumstances). We have considered your argument and reviewed the submitted information.

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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Vibra-Tech explaining why any portion of the submitted information should not be released. Therefore, we have no basis to conclude Vibra-Tech has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, third party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested

¹Although you raise section 552.022 of the Government Code, that section is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022.

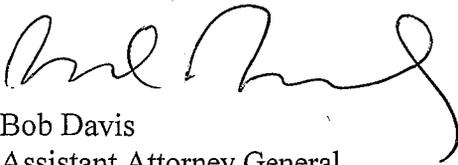
information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Consequently, the city may not withhold any of the submitted information on the basis of any proprietary interest Vibra-Tech may have in the information.

You claim the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). 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. We note blank forms may not be copyrighted. 37 C.F.R. § 202.1(c). As you raise no further exceptions to disclosure, the submitted information must be released to this requestor, but any information subject to copyright 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, 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 414917

Enc. Submitted documents

c: Requestor
(w/o enclosures)