



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2012

Ms. Myrna S. Reingold
County of Galveston
Legal Department
722 Moody, 5th Floor
Galveston, Texas 77550-2317

OR2012-11161

Dear Ms. Reingold:

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# 459162.

The County of Galveston (the "county") received two requests for information pertaining to the current contract for print shop printing services and copying equipment, including the service and maintenance agreements for copying equipment, the most recent bid tabulations, and the most recent winning bid responses. The county takes no position as to disclosure of the information. Because release of the information may implicate the proprietary interests of the Xerox Corporation ("Xerox"), the county notified Xerox of the request and of its right to submit arguments to this office as to why its information should not be released. Gov't Code § 552.305(d) (permitting third party with proprietary interest to submit to attorney general reasons why requested information should not be released).

First, the county acknowledged it failed to comply with section 552.301(b) of the Government Code, which requires a governmental body to ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *Id.* § 552.301(b). We also note the county failed to comply with section 552.301(e) of the Government Code, which requires that a governmental body submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed

statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. Here, a compelling reason exists because a third party's interest is implicated.

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, Xerox has not submitted arguments to this office explaining why its information should not be released. We thus have no basis to conclude release of the information will harm the Xerox's proprietary interests. *See id.* § 552.110; 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 (1990). Accordingly, the county may not withhold the information based on any proprietary interests Xerox may have.

We note some of the materials at issue may be 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.

The submitted information must be released; however, any information that is subject to copyright may be released only 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/tch

Ref: ID# 459126

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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