



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 3, 2012

Mr. Ed C. Jones  
County Attorney  
Angelina County  
P.O. Box 1845  
Lufkin, Texas 75902

OR2012-15753

Dear Mr. Jones:

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# 466716.

The Angelina County Community Supervision and Corrections Department (the "department") received a request for "software documentation" and related manuals for two specified systems used by the department.<sup>1</sup> You state you do not maintain the requested manuals.<sup>2</sup> You claim some of the requested information is not public information subject to the Act. Although you take no position on whether the submitted information is excepted from disclosure, you state release of this information may implicate the proprietary interests of Computer Software Solutions ("CSS") and Tyler Technologies ("Tyler"). Accordingly,

---

<sup>1</sup>You note that the department received a clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>In responding to a request for information under the Act, a governmental body is not required to disclose information that did not exist at the time the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

you have notified both CSS and Tyler of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from Tyler. We have considered the submitted arguments and reviewed the submitted information.

Initially, you assert the requested software is licensed to the department and is not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You state the department obtained a license for the software at issue. We understand you to assert that while the documents produced by the software would be subject to the Act, the software itself is merely a tool for the maintenance, manipulation, or protection of public property. Upon review, we find the requested software does not constitute public information under section 552.002 of the Government Code. We therefore conclude this information is not subject to the Act and need not be made available to the requestor under the Act.

Next, we note Tyler seeks to withhold the requested software manuals, which the department has not submitted because it states it does not maintain this information. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted by the department. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit a copy of specific information requested). Accordingly, we do not address Tyler's arguments against disclosure of this information.

Finally, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this decision, we have not received correspondence from CSS. Thus, CSS has not demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); 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. Accordingly, the department may not withhold the submitted information on the basis of any proprietary interests CSS may have in the information. As no exceptions to disclosure have been raised, the department must release the submitted information.

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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/akg

Ref: ID# 466716

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Ms. Stacey Gerard  
Contracts Manager  
Tyler Technologies  
One Cole Haan Drive  
Yarmouth, ME 04096  
(w/o enclosures)

Computer Software Solutions  
c/o Mr. Ed C. Jones  
County Attorney  
Angelina County  
P.O. Box 1845  
Lufkin, Texas 75902  
(w/o enclosures)