



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 11, 1997

Ms. Susan G. Spinks
Assistant General Counsel
Office of General Counsel
The Texas A&M University System
John B. Connally Building
301 Tarrow, 6th Floor
College Station, Texas 77843-1230

OR97-1568

Dear Ms. Spinks:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106983.

The Texas A&M University System (the "university") received a request for "the Job Training Safety Program conducted by your agency in conducting safety classes/seminars for Panola-Harrison. . . including but not limited to written materials and videotapes which were used by the Texas Engineering Extension Service. . ." You contend, however, that some of the requested information is excepted from public disclosure because "as long as the materials are available for purchase by an individual, regardless of the cost, the agency is not obligated under the Public Information Act to provide them for inspection." You also assert that the university need not make the requested copies or allow the inspection of the information and this position invokes section 552.027 of the Government Code. We have considered your arguments and have reviewed the documents at issue.

Section 552.027 of the Government Code provides:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

This section is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. Open Records Letter No. 96-0251 (1996). The legislative history of this provision notes that section 552.002 should exclude from the definition of public information

books and other materials that are also available as research tools elsewhere to any member of the public. Thus, although *public library books* are available for public use, the library staff will not be required to do research or make copies of books for members of the public.

INTERIM REPORT TO THE 74TH LEGISLATURE OF THE HOUSE STATE AFFAIRS COMM., 74th Leg., R.S., SUBCOMMITTEE ON OPEN RECORDS REVISIONS 9 (1994) (emphasis added). Therefore, section 552.027 excludes commercially available research material from the definition of "public information." "Public information," however, as defined by section 552.002, must be produced for inspection or duplication or both, Gov't Code § 552.221, unless an applicable subchapter C exception applies to the information, *id.* §§ 552.101-.124; *see* Open Records Decision Nos. 565 (1990), 549 (1990), 470 (1987).

We have reviewed the information submitted for our consideration. The list of materials and video tapes concern the techniques and methods of conducting safety classes and seminars. They consist of various video program information on loss and control measures at Panola-Harrison. We do not believe that the requested information comes within the ambit of "a commercial book or publication purchased or acquired by the governmental body for research purposes." The information appears to have been utilized by the university in connection with the transaction of official business. *See id.* § 552.002(a)(2) (defining public information). Although the documents may be commercially available to the public, it is not apparent that the university purchased or acquired them for research purposes in the same way that a telephone or library book would be.

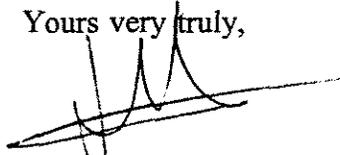
We further note in response to your contention that the tapes are in use "throughout the State of Texas and are not all located in one place at one time" the following provision under section 552.221(c) of the Government Code:

If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

In conclusion, we do not believe that the requested documents are that kind of information covered by section 552.027. Thus you must allow public inspection of the materials.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet V. Monteros
Assistant Attorney General
Open Records Division

JIM/gle

Ref.: ID# 106983

Enclosures: Submitted document

cc: Mr. W. F. Palmer
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(w/o enclosures)

¹You have noted that the material 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. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials 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).

