



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 27, 1998

Mr. Alex Lopez
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR98-1772

Dear Mr. Lopez:

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# 116049.

The City of Corpus Christi (the "city") received an open records request for a copy of "compliance mapping" in digital format. You explain that the requested information

is copyrighted G.I.S. (Geographic Information System) data. The [city's] G.I.S. data was created by the process of searching through public information (deed records, plats etc.), altering, editing, and arranging the information, and finally, digitizing it.

In addition to the map and underlying data gathered by the city for the composition of the mapping, you inform us that the open records request also encompasses the computer software developed by the city for the creation of the mapping. In Open Records Decision No. 581 (1990), this office determined that certain computer-related information, such as source codes 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. Accordingly, the computer software developed by the city is not subject to the Open Records Act.

This does not, however, end our discussion of whether the city must release the requested software. You have directed our attention to section 253.007(b) of the Local Government Code, which provides as follows:

(b) A municipality that independently or in conjunction with any person develops automated information systems software may contract with a person for the sale, lease, marketing, or other distribution of the software. Any release of municipally developed automated information systems software must be under a contract that provides that the municipality will receive a royalty, license right, or other appropriate compensation for developing the software. The provisions of Chapter 552, Government Code, governing the cost of making copies of public records do not apply to automated information systems software subject to a contract under this section.

Section 253.007(c) defines "automated information systems software" to mean "any procedure or software that is designed, operated, or maintained to collect, record, process, store, retrieve, display, or transmit information."

We believe that the specific access provision found in section 253.007(b) governs the release of the requested software. Section 253.007 provides that "[a]ny release of municipally developed automated information systems software must be under a contract" Furthermore, because section 253.007 provides that the municipality "may" release the software under contract, this provision grants to the municipality the discretion as to whether the software will be released in any particular situation. We therefore conclude that the city is not required to release the requested software pursuant to the Open Records Act, but rather may release this information only in accordance with section 253.007 of the Local Government Code.

We now address whether the map and the underlying data gathered by the city for the composition of the mapping must be released to the requestor. You contend that because the city holds a copyright to the requested information, the information is excepted from required public disclosure pursuant to section 552.228(b)(3) of the Government Code. Section 552.228(b)(3) provides as follows:

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

....

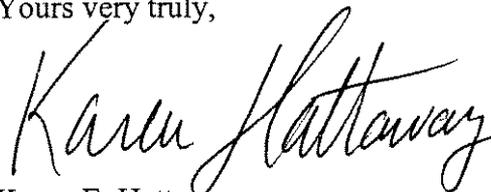
(3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body *and a third party*. [Emphasis added.]

Because it is the city, and not a third party, that holds the copyright to the information at issue, section 552.228(b)(3) is inapplicable in this instance.

Assuming that the city in fact holds a legal, enforceable copyright on the map and the underlying data, we conclude that any copying must be consistent with federal copyright law. *See* Attorney General Opinion JM-672 (1987) (custodian of public records must comply with copyright law and is not required to furnish copies of copyrighted records). 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). Regardless of whether the requestor is entitled to copy the requested information, he is entitled to inspect the information under the Open Records Act. Open Records Decision No. 180 (1977).

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/rho

Ref.: ID# 116049

cc: Mr. William Fox
Koch Operations Group
8606 IH 37
Corpus Christi, Texas 78409