



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 14, 2003

Ms. Hadassah Schloss  
Open Records Administrator  
Texas Building and Procurement Commission  
P.O. Box 13047  
Austin, Texas 78711

OR2003-7320

Dear Ms. Schloss:

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# 189311.

The Texas Building and Procurement Commission (the "Commission") received a request via e-mail for the following two categories of information: 1) a copy of the requestor's personnel file records for a specified period of time, and 2) a CD copy of particular subfolders from the Drive: G CPS Procurement Training folder. You inform us that you have released a complete copy of the requested personnel file to the requestor. Also, you advise us that the Commission does not possess a folder called "AUDIT."<sup>1</sup> Further, you indicate that information responsive to category two of the request does not contain confidential information; however, you seek only to grant the requestor access to the information, and not provide him with copies, because the requested information constitutes copyrighted material. We reviewed the information you submitted and considered your arguments.

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<sup>1</sup> The Act does not require a governmental body to disclose information that does not exist at the time a request is received or to create new information in response to a request. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

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). You state that the submitted CD-ROM contains PowerPoint presentations of copyrighted material. After reviewing the information on the CD-ROM, we agree that it contains substantially similar information as the submitted bound copyrighted information. Accordingly, we conclude the Commission must comply with copyright laws with respect to the submitted information.

Last, you state that “[i]n a separate email, [the requestor] requested to be given access to the records he kept while employed at [the Commission] so he can determine if he filed the records under a different name.” You contend that the Commission has no obligation to allow the requestor access to the Commission’s computers. In Open Records Decision No. 571 (1990), this office concluded that the Act does not give members of the public a right to use a governmental body’s computer to inspect records. Open Records Decision No. 571 at 4 (1990); *see also* Attorney General Opinion JM-672 (1987) (stating that access to records under Act does not include right to access through direct computer searches). Therefore, to the extent the requestor seeks access to the Commission’s computers, we agree that the Commission has no obligation under the Act to grant such access to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 189311

Enc: Submitted documents

c: Mr. Reed Stoddard  
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(w/o enclosures)