



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 24, 2004

Mr. Blake G. Powell
Powell & Leon, L.L.P.
1706 West Sixth Street
Austin, Texas 78703-4703

OR2004-5182

Dear Mr. Powell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204012.

The Harts Bluff Independent School District (the "district"), which you represent, received a request for documents submitted by a winning contract bidder pertaining to payments on the mechanical portion of a gymnasium construction contract and draw requests relating to that contract. You claim that some of the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note you have not submitted the requested documents that evidence payment for the draw requests, nor have you indicated that you seek to withhold any such information; therefore, if such information existed on the date of the district's receipt of this request for information, we assume you have already released it to the requestor. You must release it to the requestor at this time if you have not done so already. *See Gov't Code §§ 552.301(a), 552.302; see also Open Records Decision No. 664 (2000) (if governmental body concludes*

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See* Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989). The district asserts that "it has previously responded to an almost identical request propounded by [the requestor]'s legal counsel nearly one year ago" and that the requestor "already possesses the requested documents." Thus, the district voluntarily disclosed the information that has been requested in this instance in response to a prior request for information. Accordingly, the district may not now withhold the information that is responsive to the request at issue unless release of the information is expressly prohibited by law. Section 552.103 of the Government Code is a discretionary exception that does not prohibit the release of the information at issue. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.--Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 177 (1977) (governmental body may waive law enforcement exception); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Furthermore, after reviewing the submitted information, we find that no portion of the information is expressly prohibited by law from being released. Therefore, we conclude that the district must release the submitted information to the requestor.

Finally, we note that the submitted AIA documents G702 and G703 are copyrighted. 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). Thus, in releasing the submitted information to the requestor, the district's release of documents G702 and G703 must comply with copyright law.

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).

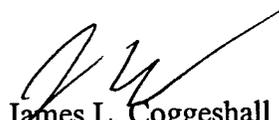
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 204012

Enc. Submitted documents

c: Mr. Eddie M. Corbitt
Humphrey & Associates, Inc.
11235 Shady Trail
Dallas, Texas 75229
(w/o enclosures)