



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 15, 2004

Mr. Anthony S. Corbett  
Freeman & Corbett, LLP  
8500 Bluffstone Cove, Suite B-104  
Austin, Texas 78759

OR2004-10629

Dear Mr. Corbett:

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# 214079.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received two requests from the same requestor for several categories of information, including copies on floppy disks of Excel spreadsheets containing the district's approved and adopted budget and certain financial projections for income and expenses. The requestor also seeks access to the Excel formulae contained in each of the cells of the spreadsheets. You inform us that the district will release most of the materials to which the requestor seeks access, including electronic copies of the spreadsheets that are responsive to these requests. You contend, however, that the requested formulae are not subject to disclosure under the Act. We have considered your arguments and have reviewed the documents that you have submitted.

Initially, we address your assertion that the formulae are not subject to disclosure under the Act. We note that the Act is applicable to "public information." See Gov't Code § 552.021. "Public information" is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

*Id.* § 552.002(a). Thus, virtually all information in the physical possession of a governmental body is public information that is encompassed by the Act. *Id.* § 552.022(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988).

In Open Records Decision No. 581 (1990), this office determined that certain computer-related information that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, such as source codes, documentation information, and other computer programming, is not the kind of information that is made public under the Act. *See id.* at 6. In Attorney General Opinion No. DM-41 (1991), we addressed the applicability of the Act to coded formatting instructions embedded in nine-track magnetic tape. We were informed that the formatting instructions were not directly relevant to the information on the tape, but instead instructed the computer to arrange the information for printing from the tape onto microfiche. *See id.* at 2. Citing Open Records Decision No. 581 (1990), we stated that

[t]hese formatting codes are not necessary to the understanding of the information provided on magnetic tape and have no significance other than their use as a tool for manipulating the information to facilitate the production of computer-output microfiche.

Attorney General Opinion No. DM-41 at 3. We concluded that the formatting codes were not information that was independently subject to disclosure under the Act. *See id.* at 3-4.

In this instance, you argue that the formulae created and utilized by the district to build spreadsheets are not necessary to the understanding of the information in the spreadsheets. You explain that the formulae represent mathematic formulae that allow the computer to generate the information in each cell of the spreadsheet. You contend that the district need not furnish the formulae to the requestor. Having considered your arguments, we are not persuaded that the formulae are used merely as a tool to manipulate information. Rather, the formulae clearly appear to be relevant to an understanding of how the district calculated the figures contained in the submitted spreadsheets and what the district considered in calculating the figures in the submitted spreadsheets. We therefore conclude that the formulae constitute public information that is subject to disclosure under the Act. *See* Gov't Code §§ 552.002, .021; Open Records Decision No. 401 at 2 (1983) (information does not escape Act merely because it is expressed as "formula" or is in some other coded form). Because you do not argue that the formulae are otherwise excepted from disclosure under the

Public Information Act, we find that the district must release the formulae to the requestor.<sup>1</sup> Gov't Code §§ 552.301, .302.

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).

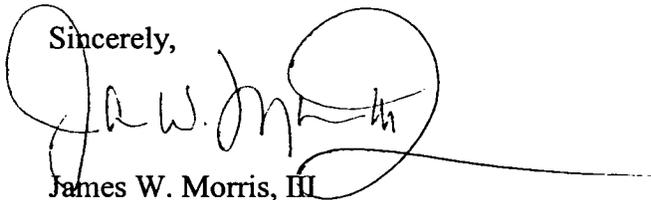
---

<sup>1</sup>You also ask that the district be permitted to release the formulae on diskette in a locked format so that they are not capable of manipulation. We note that the requestor only requests the spreadsheet information on diskette. The requestor does not specify whether the copy should be in a format that is capable of being manipulated. Therefore, we find that the formulae on diskette in a locked format would be responsive to the request and the district will comply with its obligations under the Act in this instance if it provides the requestor with a diskette that contains the responsive spreadsheets and the requested formulae in a form that is not manipulable.

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", enclosed within a large, hand-drawn circle. A long horizontal line extends from the right side of the circle.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 214079

Enc: Submitted documents

c: Mr. John C. McLemore  
8400 Cornerwood Drive  
Austin, Texas 78717  
(w/o enclosures)