



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2005

Ms. Noelle C. Letteri
Legal Services Division
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2005-05705

Dear Ms. Letteri:

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# 227152.

The Texas General Land Office (the "land office") received a request for information related to the "mass-balanced algorithm" utilized in a land office audit of metering of gas and condensate production from certain facilities operated by the requestor's company. You state that some information will be made available to the requestor. However, you claim that portions of such information may contain proprietary information subject to exception under the Act. Pursuant to section 552.305(d) of the Government Code, you have notified interested third party Matthew T. Scott, P.E. of the request and of his opportunity to submit comments to this office. *See Gov't Code § 552.305* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

We note that the information at issue is not subject to the Act. Specifically, the information consists of two computer programs, WET_GAS and WGMETER, in executable and open source code format, supporting derivations, program algorithms and program code, supporting external spreadsheets, program and application notes, and program methods of

analysis. In Open Records Decision No. 581 (1990), this office determined that certain computer information such as source codes, documentation information, 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 that is made public under section 552.021 of the Act. Open Records Decision No. 581 (1990) (construing predecessor statute). The information at issue here functions solely as a tool to maintain, manipulate, or protect public property and has no independent relevance. *Id.* at 6. As such, this information is not public information as defined by section 552.002 of the Government Code, and therefore is not subject to the Act. Thus, the two computer programs, WET_GAS and WGMETER, in executable and open source code format, supporting derivations, program algorithms and program code, supporting external spreadsheets, program and application notes, and program methods of analysis need not be released in response to this request. As our ruling is dispositive, we need not address the arguments against disclosure.

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).

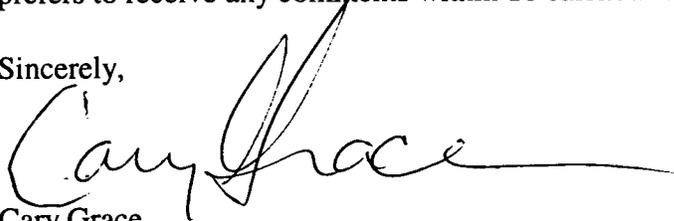
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,

A handwritten signature in black ink that reads "Cary Grace". The signature is fluid and cursive, with a long horizontal line extending to the right.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 227152

Enc. Submitted documents

c: Mr. Richard C. Dykhuizen
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(w/o enclosures)

Mr. Matthew Scott
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(w/o enclosures)