



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2006

Ms. Cathleen Parsley
General Counsel
P. O. Box 13025
Austin, Texas 78711-3025

OR2006-00969

Dear Ms. Parsley:

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# 241204.

The State Office of Administrative Hearings ("SOAH") received a request for a copy of the transcript in Docket No. 503-05-5557. You claim that the requested information is excepted from disclosure under section 552.027 of the Government Code. You also state that the court reporter who created the requested transcript may have a proprietary interest in the submitted information, and notified the third party of the request for information. *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 in Act in certain circumstances). We have considered the claimed exception and reviewed the submitted information.

Initially, we address your contention that SOAH need not provide the requested information under section 552.027 of the Government Code, which provides:

- (a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.
- (b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027. This section is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. You state that the requested records include copies of the transcript of a court hearings transcribed by a court reporter.¹ However, we find you have failed to demonstrate that the information came from the type of commercial book or publication contemplated by section 552.027. *See* Gov't Code § 552.027. Accordingly, we conclude that the submitted information is "public information" and, therefore, subject to the Act. *See* Gov't Code § 552.002.

Under section 552.305(d), an interested third party has ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received correspondence from the notified court reporter with reasons explaining why the submitted information should not be released. Therefore, the third party has provided us with no basis to conclude that it has a protected proprietary interest in any of the submitted information, and none of the information may be withheld on that basis. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). The submitted information must, therefore, be released 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

¹This office has found that an administrative forum operating pursuant to the Administrative Procedure Act functions as a court. *See* Open Records Decision No. 588 (1990) at 3 (citing *State v. Thomas*, 766 S.W.2d 217 (Tex. 1989)).

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); *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 Office of the Attorney General 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. 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/er

Ref: ID# 241204

Enc. Submitted documents

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