



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 7, 2009

Mr. Sands L. Stiefer  
Chief Deputy & General Counsel  
Harris County Appraisal District  
P.O. Box 320975  
Houston, Texas 77292-0975

OR2009-00200

Dear Mr. Sands:

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# 331610.

The Harris County Appraisal District (the "district") received a request for the logic, documentation, and computer code relating to the computer program that determines the priority of informal or formal hearings and any internal communications regarding concerns with the program. The requestor also seeks the request for proposal for the program, the proposal to provide the program, the user manual and communications regarding debugging files. You state you will release some of the requested information. You state portions of the submitted information are not subject to the Act. You also claim portions of the submitted information are excepted from disclosure under section 552.110 of the Government Code. Further, you state, and provide documentation showing, the district notified Software Techniques, Inc. of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted information.

You claim portions of the submitted information are not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act defines public information 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. 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. *See* Open Records Decision No. 581 at 6 (1990) (construing predecessor statute). Portions of the submitted information consists of source code and e-mails related to the debugging of a district computer program. You state the source code information relates to the selection, storage, and manipulation of data and the e-mails deal with the proper functioning of the computer code. Based on your representations, and our review, we find Exhibit B and the information you have marked in Exhibit C are used solely as tools to maintain, manipulate, or protect public property and have no other significance. *Id.* As such, this information is not public information, as defined by section 552.002, and thus is not subject to the Act. Therefore, the commission need not release Exhibit B or the information you have marked in Exhibit C to the requestor.<sup>1</sup>

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Software Techniques, Inc. has not submitted any reasons explaining why its submitted information should not be released. Therefore, the Software Techniques, Inc. has not provided us with any basis to conclude they have protected proprietary interests in any of the remaining submitted information. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Accordingly, we conclude the district may not withhold any portion of the remaining information on the basis of the proprietary interests the notified third party may have in the information. As no arguments against disclosure of the remaining information have been raised, it must be released.

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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

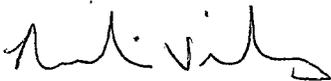
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/eeg

Ref: ID# 331610

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Larry Zirbel  
Software Techniques, Inc.  
1250 Minnesota Avenue  
Winter Park, Florida 32789  
(w/o enclosures)