



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2020

Ms. Morgan Day Vaughan
Counsel for Lubbock Private Defenders Office
Crenshaw, Dupree & Milam, L.L.P.
4411 98th Street, Suite 400
Lubbock, Texas 79464-4479

OR2020-27433

Dear Ms. Vaughan:

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# 851842 (CD&M No. 10230.75944).

The Lubbock Private Defenders Office (the "defenders office"), which you represent, received a request for information pertaining to office spaces for the defenders office, interoffice memoranda, and e-mails pertaining to the defenders office, the Board of Directors, and other offices of the defenders office. You state the defenders office does not have information pertaining to a portion of the request.¹ We understand the defenders office will release some of the requested information upon payment of costs. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties. Accordingly, you state, and provide documentation showing, you notified two named individuals; Hart Chesnutt, LLC ("Hart"); and SoulFire Industries, LLC of the request for information and of their 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 received comments from Hart.² We have reviewed the submitted information.

¹ We note the Act does not require a governmental body to disclose information that did not exist at the time the governmental body received the request for information. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

² Hart raises section 552.305 of the Government Code. We note section 552.305 is not an exception to public disclosure under the Act. *See* Gov't Code § 552.305. Rather, section 552.305 addresses the procedural requirements for notifying third parties their interests may be affected by a request for decision. *Id.*

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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). Although we received comments from Hart, Hart does not raise any exceptions to disclosure or assert it has a protected proprietary interest in the information at issue. In addition, as of the date of this letter, we have not received comments from the remaining notified third parties explaining why their information should not be released. Therefore, we have no basis to conclude the remaining notified third parties have a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, the defenders office may not withhold any of the information at issue on the basis of any proprietary interest the remaining notified third parties may have in it. The defenders office must release the submitted information.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 851842

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)