



June 21, 2002

Mr. William R. Crow, Jr.
Corporate Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2002-3396

Dear Mr. Crow:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164687.

The San Antonio Water System ("SAWS") received a request for all personnel records of Rolando H. Briones, Jr., all documents used as the basis of Mr. Briones' termination, and all company policies or procedures allegedly breached by Mr. Briones. You claim that some of the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

With the exception of information already provided or made available to the requestor, you object to the second portion of the request for "all documents" related to Mr. Briones' termination in that the request is not limited as to time or subject matter. You advise that you have requested a clarification from the requestor as to this portion of the request. *See* Gov't Code § 552.222(b) (providing that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified); Open Records Decision No. 663 at 4 (1999) (a request "must sufficiently identify the information requested and an agency may ask for a clarification if it cannot reasonably understand a particular request"). You indicate that SAWS had not received a clarification as of the date of your request to this office. Because the requestor has not responded to the request for a clarification, SAWS need not respond to this portion of the request to the extent it has not identified responsive information until it receives the requestor's response. Should the requestor submit such a response, SAWS must seek a ruling from this office before withholding any responsive information from the requestor. *See also* Open Records Decision No. 663 (1999) (providing for tolling of ten business day time limit to request attorney general decision while governmental body awaits clarification).

We note that you have previously sought a decision from this office with respect to the submitted records relating to the same individual's termination. In Open Records Letter

No. 2002-3115 (2002), we concluded that SAWS was required to release the requested information, with the exception of information that must be withheld under sections 552.130 and 552.136 of the Government Code. Therefore, as the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that we need not revisit the submitted records.¹ SAWS must release the requested information in accordance with Open Records Letter No. 2002-3115, with the following exception. *See* Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

The submitted information contains e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act]." *See* Gov't Code § 552.137(a). As there is no indication that the individuals to whom the e-mail addresses belong have consented to their release, SAWS must withhold the e-mail addresses that we have marked under section 552.137 of the Government Code. *See* Gov't Code § 552.137(b) (confidential information described by this section that relates to member of the public may be disclosed if member of public affirmatively consents to its release).

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

¹The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

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 Department of Public 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 164687

Enc. Submitted documents

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(w/o enclosures)