OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

September 9, 2002

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR2002-5031

Dear Ms. Constantine:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168391.

The Dallas-Fort Worth International Airport Board (the "board") received a request for certain e-mails contained on a named individual's computer. You state that the board has released "the available business-related e-mail." The board claims that the rest of the requested e-mails do not constitute public information under the Public Information Act (the "Act"), chapter 552 of the Government Code. We have considered the board's arguments and have reviewed the submitted information.

Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 defines "public information" as consisting of

> 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.

Gov't Code § 552.002(a). This office has stated that certain factors are relevant, although not exhaustive, in deciding whether a document is essentially governmental or personal information: who prepared the document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the governmental body required its preparation; and whether its existence was necessary to or in furtherance of official business. *See* Open Records Decision No. 635 (1995).

In this instance, the board states that the submitted e-mails "were not collected, assembled or maintained under a law or ordinance or in . . . connection with transaction of official business" The board informs us that these e-mails "are entirely unrelated to Board business" and "are of an entirely personal nature and contain no Board business of any kind." The board also informs us that these e-mails "are not of a prohibited nature and do not constitute a violation of Board policy." The board contends that these e-mails "can in no way be of legitimate interest to the public." Upon consideration of the board's arguments and review of the submitted e-mails, we agree that they do not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the board. Gov't Code § 552.002(a). Thus, as the submitted e-mails do not constitute public information, the Act does not require the board to release them 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 have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

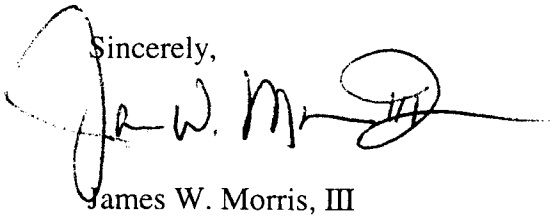
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 168391

Enc: Marked documents

c: Ms. Patricia Bostic
c/o Ms. Anne M. Constantine
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(w/o enclosures)