



September 10, 2002

Mr. Patrick W. Lindner
Law Offices of Davidson & Troilo
7550 West IH-10, Suite 800
San Antonio, Texas 78229-5815

OR2002-5052

Dear Mr. Lindner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168370.

The Brownsville Public Utilities Board (the “board”), which you represent, received a request for “copies of documents provided to the Office of the Attorney General in connection with my initial request.” The requestor also seeks copies of information pertaining to the “total fees paid to external counsel in calendar year 2001 (including breakdowns for each firm or solo practitioner hired)” and the “portion[s] of these legal bills [that] were dedicated to lobbying activities by registered lobbyists (including breakdowns for each affected registered Texas lobbyist).” You claim that the submitted information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.103, 552.107, 552.110, and 552.133 of the Government Code, as well as rule 192.5 of the Texas Rules of Civil Procedure and rule 503 of the Texas Rules of Evidence.¹ We have considered the

¹ Although you claim that the information at issue is excepted from disclosure pursuant to sections 552.110 and 552.133 of the Government Code, you did not provide us with any comments stating the reasons why these particular exceptions to disclosure apply to the information. See Gov’t Code § 552.301(e)(1)(A). Accordingly, we do not address whether any portion of the information at issue is excepted from disclosure under sections 552.110 and 552.133 of the Government Code.

exceptions you claim and have reviewed the submitted information, which includes representative sample documents.²

We note at the outset that you indicate that the board may not maintain information that is responsive to the requests related to lobbying activities or the total fees paid to external counsel in calendar year 2001. It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990). Based on our review of your representations, we are uncertain whether the board maintains or has access to any information that is responsive to the requests related to lobbying activities or the total fees paid to external counsel in calendar year 2001. To the extent that the board maintains or has access to such responsive information, the board must release such information at this time. *See* Gov't Code §§ 552.006, .301, .302. However, to the extent that the board does not maintain or have access to such responsive information, we conclude that the board need not respond to this particular portion of the request.

Next, we note that this office previously addressed all of the submitted information in Open Records Letter No. 2002-3949 (2002). Specifically, we ruled that the board may withhold one document from disclosure pursuant to rule 503 of the Texas Rules of Evidence, portions of other information pursuant to section 552.107 of the Government Code, and an email address pursuant to section 552.137 of the Government Code, unless the individual to whom the email address belongs consented to its release. We also concluded that the board must release the remainder of the submitted information to the requestor. You do not inform us that the facts, law, and circumstances upon which that ruling was based have changed since the issuance of that ruling. Accordingly, with respect to the submitted information at issue in this instance, we conclude that the board should rely on our decision in Open Records Letter No. 2002-3949 (2002). *See* Gov't Code § 552.301(f); *see also* Open Records Decision No. 673 (2001).

In summary, to the extent that the board maintains or has access to any information that is responsive to the requests related to lobbying activities or the total fees paid to external counsel in calendar year 2001, the board must release such information at this time. However, to the extent that the board does not maintain or have access to such responsive

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information, we conclude that the board need not respond to this particular portion of the request. With respect to the submitted information, the board should rely on our decision in Open Records Letter No. 2002-3949 (2002).

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).

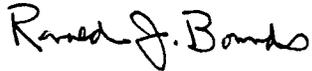
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 168370

Enc. Submitted documents

cc: Mr. Andrew Wheat
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(w/o enclosures)