



September 12, 2002

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

OR2002-5123

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# 168511.

The Dallas Fort-Worth International Airport Board (the "board") received a request for "[a]ll forms of electronic data including but not limited to memorandums, correspondence, [and] e-mail" sent and received by certain named individuals on certain dates during 2002. In addition, the requestor has asked for all correspondence "used as backup" in relation to a prior open records request for "Performance Appraisal and Request to Fill" information relating to three specified individuals. You have not submitted any information responsive to the request for correspondence "used as a backup," nor have you raised any exceptions to its disclosure. Therefore, we assume that you have released this information to the requestor. If not, you must release it immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). With respect to the request for electronic data, you state that the board has provided the requestor with the responsive business-related e-mails. You claim that the remainder of the e-mails are not public information subject to the Public Information Act (the "Act.") Furthermore, you have submitted some personal financial information that you claim is excepted from disclosure under section 552.101 of the Government Code. We have considered your comments and reviewed the submitted representative sample of information.¹

¹ 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.

We begin by considering the personal financial information you have submitted for our review. You have not explained, nor is it clear from our review of the documents, how the personal financial information you have submitted is responsive to this request for "electronic data." Accordingly, we find that this information is not responsive to the present request and we do not address the public availability of this information in this ruling.

Next, we consider whether the e-mails at issue are subject to the Act, chapter 552 of the Government Code. Chapter 552 is only applicable to public information. *See* Gov't Code § 552.021. Section 552.002 of the Government Code 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." Information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. *See* Open Records Decision No. 462 (1987).

In this case, you have submitted e-mails sent and received by board employees. You argue that the e-mails at issue "are of an entirely personal nature." You further state that the e-mails were not collected, assembled, or maintained in connection with the transaction of any official business of the board, nor were they collected, assembled, or maintained pursuant to any law or ordinance. Based on your comments and our review of the e-mails at issue, we agree that these communications do not relate to the transaction of official board business. Therefore, we determine that the e-mails at issue do not constitute "public information" of the board. Thus, the board is not required to disclose the information under chapter 552 of the Government Code. *Cf.* Open Records Decision No. 635(1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving de minimis use of state resources).

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,

A handwritten signature in black ink, appearing to read "DRS" followed by a long horizontal flourish.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 168511

Enc: Submitted documents

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(w/o enclosures)