



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 29, 2003

Ms. Victoria J.L. Hsu, P.E.
Executive Director
Texas Board of Professional Engineers
1917 IH-35 South
Austin, Texas 78741

OR2003-3624

Dear Ms. Hsu:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182053.

The Texas Board of Professional Engineers (the "board") received two requests for information from the same requestor. In the first request, the requestor asked for the mailing addresses for all licensed structural engineers in Texas. You state that you have released this information to the requestor. In the second request, the requestor asked for the e-mail addresses for all licensed structural engineers in Texas. You claim that this requested information is excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed the submitted sample of information.¹

Section 552.137 of the Government Code provides:

- (a) An 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 this chapter.

¹We 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.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. You inform us that none of the structural engineers who has provided their e-mail address to you has affirmatively consented to the release of such information. The board must, therefore, withhold the requested e-mail addresses under section 552.137. We note that section 552.137 does not apply to a business' general e-mail address or to a government employee's work e-mail address.

You ask this office to issue a previous determination authorizing the board to withhold e-mail addresses for licensees in subsequent public information requests. After considering your request, we have decided that this letter ruling shall serve as a previous determination under section 552.301(a) that the non-government e-mail addresses from members of the public are excepted from disclosure under section 552.137 of the Government Code, unless the members of the public have affirmatively consented to their release. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001).

This previous determination applies only to the non-government e-mail addresses from members of the public that are requested of the Texas Board of Professional Engineers. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the board need not ask for a decision from this office again with respect to this type of information requested of the board. *See id.*

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 Dep't of Pub. 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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 182053

Enc. Submitted documents

c: Ms. Liz Stansfeld
c/o Victoria J.L. Hsu
Texas Board of Professional Engineers
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Austin, Texas 78741
(w/o enclosures)