



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 12, 2003

Mr. Christopher B. Richardson  
Strawn & Richardson, PC  
602 Sawyer, Suite 205  
Houston, Texas 77007-7510

OR2003-8117

Dear Mr. Richardson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190952.

The Galveston County Water Control & Improvement District No. 12 (the "district"), which you represent, received a request for inspection of twelve categories of information. You claim that the information responsive to category seven of the request, "copies of any correspondence between any Board member and any other person, other than the District's attorney(s) regarding the potential annexation of South Kemah and/or Kemah Oaks," does not constitute public information under section 552.002 of the Government Code or, in the alternative, is excepted from disclosure under section 552.109 of the Government Code.<sup>1</sup> You have not submitted information responsive to the other categories of the request or any arguments for withholding such information. Therefore, to the extent such information exists, we presume you have released it. If you have not, you must do so at this time. See Gov't Code §§ 552.301, .302. We have considered your arguments and reviewed the submitted sample of information.<sup>2</sup>

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<sup>1</sup> We note that you quote category seven of the request, but refer to it as category six. We assume for purposes of this ruling that you intended to address the category that you have quoted.

<sup>2</sup> 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 first address your contention that the submitted information does not constitute public information under section 552.002 of the Government Code. The Public Information Act (the "Act") applies only to public information. *See* Gov't Code §§ 552.021, 221. Section 552.002(a) of the Act defines "public information" as information "collected, assembled, or maintained under a law or ordinance or in connection with 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). Thus, under this provision, information is generally "public information" within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of an individual. *See* Open Records Decision No. 635 at 4 (1995). We note that the determination of whether information is subject to the Act is case specific. This office determined that information is generally public information within the Act when it relates to the official business of a government body. Open Records Decision No. 635 at 4 (1995). Upon review of the submitted information, we conclude that it relates to the official business of a government body and is thus subject to the Act. We therefore address your argument under section 552.109 of the Government Code.

Section 552.109 protects private correspondence and communications of elected office-holders when release of the information "would constitute an invasion of privacy." *See* Gov't Code § 552.109. In determining whether information is excepted from disclosure by section 552.109, this office relies on the same common-law privacy test applicable under sections 552.101 and 552.102 of the Government Code. *See* Open Records Decision Nos. 506 (1988), 241 (1980), 212 (1978); *see also* Open Records Decision No. 40 (1974) (providing that section 552.109 may protect content of information, but not fact of communication). Section 552.101 encompasses common-law privacy, and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). You have not asserted that the communication at issue involved an elected office-holder. Furthermore, based on our review of the sample of information that you have provided, we conclude that the submitted information does not contain information that is highly intimate or embarrassing for purposes of common-law privacy and may not be withheld under section 552.109.

We note, however, that the submitted information contains e-mail addresses that are confidential under section 552.137 of the Government Code. Section 552.137 provides:

- (a) Except as otherwise provided by this section, 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.

(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.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Act of June 2, 2003, 78th Leg., R.S., ch. 1089, § 1, 2003 Tex. Sess. Law Serv. 3124 (to be codified as amendment to Gov't Code § 552.137). Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. E-mail addresses that are encompassed by subsection 552.137(c) are also not excepted from disclosure under section 552.137. You do not inform us that the district has received affirmative consent for the release of the e-mail addresses in the submitted information. Accordingly, we conclude that the district must withhold the e-mail addresses in the submitted information pursuant to section 552.137(a) of the Government Code. You must release the remaining information 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 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,

A handwritten signature in cursive script that reads "Jennifer E. Berry".

Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/sdk

Ref: ID# 190952

Enc: Submitted documents

c: Mr. William E. King  
P.O. Box 309  
Kemah, Texas 77565-0309  
(w/o enclosures)