



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 14, 2004

Ms. Amy L. Sims  
Assistant City Attorney  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2004-3984

Dear Ms. Sims:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201588.

The City of Lubbock (the "city") received a request for documents to city staff or council members that accuse the city or its agents of killing or abusing prairie dogs. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Thus, section 552.101 protects information that is deemed to be confidential under other constitutional, statutory, or decisional law. *See, e.g.*, Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). The city has not directed our attention to any law, nor do we know of any law, under which any of the submitted information is considered to be confidential for purposes of section 552.101. Therefore, the city may not withhold any of the submitted information under this section.

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<sup>1</sup>We note that former section 552.136, which also related to the confidentiality of certain e-mail addresses, was repealed as being duplicative of section 552.137. *See* Act of May 21, 2003, 78<sup>th</sup> Leg., R.S., ch. 1276, § 9.013, 2003 Tex. Sess. Law Serv. 4158, 4218.

Section 552.137 is applicable to certain e-mail addresses. As amended by the 78<sup>th</sup> Legislature, this section provides as follows:

(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.

Gov't Code § 552.137. An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is excepted from public disclosure under section 552.137, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. Section 552.137 is not applicable to the types of e-mail addresses listed in section 552.137(c). Likewise, section 552.137 does not apply to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees.

We have marked the submitted e-mail addresses that are confidential under section 552.137(a). You state that the individuals to whom these e-mail addresses belong have not consented to their public disclosure. Therefore, the city must withhold the marked e-mail addresses under section 552.137. The rest of the submitted information must be released.

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 black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 201588

Enc: Submitted documents

c: Mr. James Clark  
KAMC/KLBK  
7403 South University Avenue  
Lubbock, Texas 79423  
(w/o enclosures)