



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2005

Mr. Jeffrey L. Moore
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2005-04564

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 224851.

The City of Murphy (the "city"), which you represent, received a request for the complete personnel file for a named city employee, including but not limited to his educational records, employment history and application for employment. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that the majority of the requested information is the subject of a previous ruling issued by the office. On November 29, 2004, this office issued Open Records Letter No. 2004-10005 (2004). *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We presume that the pertinent facts and circumstances have not changed since the issuance of this prior ruling. Thus, we determine that the city must continue to rely on our ruling in Open Records Letter No. 2004-10005 with respect to the requested information addressed in that ruling. To the extent the submitted information was not addressed in Open

Records Letter No. 2004-10005, we will address the applicability of the exceptions you claim.

You state that one submitted document was not addressed in our previous ruling, and you have highlighted an e-mail address reflected on this document to which you claim section 552.137 is applicable. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. We also note that section 552.137 does not apply to a business’s general e-mail address or website address. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). Furthermore, you state that the individual whose e-mail address is at issue did not affirmatively consent to the release of the submitted e-mail address. Therefore, the city must withhold this e-mail address in accordance with section 552.137.

In summary, we conclude the city must continue to rely on our ruling in Open Records Letter No. 2004-10005 with respect to the requested information that was addressed in that ruling. The city must withhold the e-mail address you have marked under section 552.137. The remaining information must be released.¹

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

¹ Because our ruling is dispositive, we need not address any remaining arguments for the submitted information.

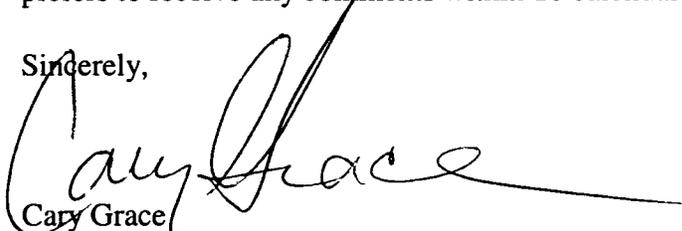
statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 224851

Enc. Submitted documents

c: Mr. Bert Mullins
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(w/o enclosures)