



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2006

Ms. Ruth H. Soucy
Manager and Legal Counsel
Open Records Division
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2006-04557

Dear Ms. Soucy:

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# 246635.

The Texas Comptroller of Public Accounts (the "comptroller") received three requests for all information submitted by the Texas Residential Construction Commission (the "TRCC") to the comptroller during the comptroller's investigation of the TRCC. The comptroller also received a request for specific information regarding the comptroller's investigation, including the costs associated with the investigation, various information regarding employees, consultants, or other individuals involved in the investigation, and certain correspondence generated during or prior to the investigation.¹ You inform us that you have no information responsive to certain portions of the request seeking specific information

¹We note that this request for a ruling was originally assigned ID#246636. We have combined this request with the other three requests into a single ruling with the identification number noted above.

regarding the investigation.² You further inform us that you are releasing some information in response to the request seeking specific information regarding the investigation, including the names, titles, employing divisions, and job descriptions of the comptroller employees involved in the investigation; the names, occupations, and employers of outside experts and consultants involved in the investigation; and non-confidential correspondence sent to, from, or within the comptroller's office in connection with the investigation. You claim, however, that some of the remaining requested information is excepted from disclosure under sections 552.107, 552.136, 552.137, and 552.147 of the Government Code. You also contend that the remaining requested information may contain proprietary information subject to exception under the Act. Accordingly, the interested third parties TRCC and Pavlik and Associates ("Pavlik") were notified of the comptroller's receipt of the requests for information and of each entity's right to submit arguments to this office as to why the information at issue should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received correspondence from both the TRCC and Pavlik. The TRCC claims that some of its information is excepted from disclosure under sections 552.101, 552.106, 552.107, 552.111, 552.136, 552.137, 552.139, and 552.147 of the Government Code. Pavlik claims that its information is excepted from disclosure under section 552.110 of the Government Code. We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.³

I. Information Not Subject to the Act

Initially, we note that some of the submitted information is not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the

²We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request for information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). Furthermore, the Act does not require a governmental body to answer questions or perform legal research. *See* Open Records Decision No. 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request for information to any responsive information that is within its custody or control. *See* Open Records Decision No. 561 at 8-9 (1990).

³We 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.

Government Code. Based on the reasoning in that decision and our review of the information at issue, we determine that the marked access identification codes and passwords, file names, internet protocol ("I.P.") addresses, and confidential access website addresses do not constitute public information under section 552.002. Accordingly, this information is not subject to the Act and need not be released to the requestors.⁴

II. Release of Information by the TRCC to the Comptroller

Next, we note that much of the information at issue was provided to the comptroller by the TRCC. In its background discussion, the TRCC informed this office that

by letter dated August 16, 2005, Representative Todd Smith asked the Comptroller to research, analyze and report on the Commission and its impact on Texas homeowners and the economy. Thereafter, the Comptroller sent her staff to interview Commission personnel and requested many agency documents. The Commission fully cooperated with the Comptroller's staff and provided hundreds of pages of information, including some that the Commission asserts are not subject to disclosure under the [Act]. The Commission provided the documents to the Comptroller as an interagency transfer without the intent to waive any exceptions to disclosure or violate the confidentiality of the information transferred.[Citations omitted].

Brief of TRCC dated March 1, 2006 at 3. Thus, it is clear that, in releasing the information to the comptroller that is at issue in this ruling, the commission was attempting to cooperate with the comptroller's investigation requested by Representative Smith. However, with regard to the investigation conducted by the comptroller of the TRCC that is at issue in the present request, this office recently issued Opinion GA-0427 (2006). The opinion addressed the authority of the comptroller to perform the type of investigation conducted of the TRCC, and it reached a number of conclusions. First, it concluded that the comptroller does not have the authority to initiate and conduct an investigation into the effectiveness and efficiency of a state agency's policies, management, fiscal affairs, or operations as formerly authorized by the Government Code. Second, it concluded that the Tax Code does not authorize the comptroller to investigate state agencies and their policies, management, and operations and to issue a report thereon, except in response to a request from the governor. Third, the opinion concluded that – although the Tax Code authorizes the Comptroller to initiate and conduct an investigation of certain agency expenditures, receipts, and disbursements – this authority cannot be construed as authorizing a more broad based investigation into the effectiveness and efficiency of a state agency's policies, management, fiscal affairs, and operations. Last, the opinion concluded that a state agency may respond to a legislator's request for assistance and information only within the constitutional and

⁴As we are able to make this determination, we need not address the TRCC's claim under section 552.139 of the Government Code.

statutory limits of the agency's authority.⁵ *See* Tex. Att'y Gen. Op. No. GA-0427 (2006). Accordingly, we are unable to conclude that the comptroller had the statutory or constitutional authority to conduct the investigation at issue or obtain the information at issue.

III. Discretionary Exceptions

In light of our conclusion regarding the authority of the comptroller to conduct the investigation that resulted in the release of the documents at issue by the TRCC to the comptroller, we next address TRCC's arguments under sections 552.106 and 552.107 of the Government Code. Section 552.106 of the Government Code excepts from public disclosure "[a] draft or working paper involved in the preparation of proposed legislation[.]" Gov't Code § 552.106(a). Section 552.106 resembles section 552.111 in that both of these exceptions protect advice, opinion, and recommendation on policy matters, in order to encourage frank discussion during the policymaking process. *See* Open Records Decision No. 460 at 3 (1987). However, section 552.106 applies specifically to the legislative process and thus is narrower than section 552.111. *Id.* The purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body. *Id.* at 2. Therefore, section 552.106 is applicable only to the policy judgments, recommendations, and proposals of persons who are involved in the preparation of proposed legislation and who have an official responsibility to provide such information to members of the legislative body. *Id.* at 1; *see also* Open Records Decision Nos. 429 at 5 (1985) (statutory predecessor to Gov't Code § 552.106 not applicable to information relating to governmental entity's efforts to persuade other governmental entities to enact particular ordinances), 367 at 2 (1983) (statutory predecessor applicable to recommendations of executive committee of State Board of Public Accountancy for possible amendments to Public Accountancy Act). Furthermore, section 552.106 does not protect purely factual information from public disclosure. *See* Open Records Decision No. 460 at 2; *see also* Open Records Decision No. 344 at 3-4 (1982) (for purposes of statutory predecessor, factual information prepared by State Property Tax Board did not reflect policy judgments, recommendations, or proposals concerning drafting of legislation). However, a comparison or analysis of factual information prepared to support

⁵In addressing the comptroller's arguments concerning its constitutional authority to conduct the investigation of TRCC, the opinion notes that "the Comptroller's brief suggests that the authority to initiate and conduct an investigation of an agency such as the TRCC derives more broadly from the office's constitutional duty to estimate expected revenues and expenditures before each regular session of the legislature and the office's statutory duties to supervise and manage the state's fiscal affairs and to suggest plans for the improvement of the general revenue. *See* Comptroller Brief, *supra* note 4, at 4-6; TEX. CONST. art. III, § 49a(a); TEX. GOV'T CODE ANN. § 403.011(3), (18) (Vernon 2005)." Tex. Att'y Gen. Op. No. GA-0427 at 5 (2006). The opinion concludes, however, that "The use of general fiscal authority to initiate and conduct what is in essence an investigation formerly authorized by Government Code section 403.022—the authority to 'review and analyze the effectiveness and efficiency of the policies, management, fiscal affairs, and operations of state agencies'—is clearly contrary to the intent of the legislature in House Bill 7." *Id.*

proposed legislation is within the scope of section 552.106. *See* Open Records Decision No. 460 at 2.

The TRCC states that TRCC staff engaged in lengthy e-mail communications with legislative staff or the governor's policy staff in response to requests for information pertaining to proposed legislation or the agency's business, and asserts that these communications are excepted under section 552.106. We note, however, that the documents at issue were released by TRCC to the comptroller. The TRCC does not inform us that it shared the responsibility with the comptroller to prepare information for the legislature regarding the proposed legislation at issue. *See* Open Records Decision No. 460 at 1 (1987) (addressing statutory predecessor to section 552.106). Likewise, as we are unable to conclude that the comptroller had the authority to conduct the investigation that resulted in the transfer of information between the TRCC and the comptroller, we conclude that the TRCC does not share a privity of interest or common deliberative process with the comptroller. *Cf.* Open Records Decision No. 561 at 9 (1990) (stating that for section 552.111 to apply, agencies between which memorandum is passed must share privity of interest or common deliberative process with regard to policy matter at issue). We therefore conclude that the TRCC has not demonstrated that section 552.106 is applicable to any of the information the TRCC seeks to withhold under that exception. Accordingly, the comptroller may not withhold any of this information under section 552.106.

Section 552.107(1) of the Government Code protects information that is encompassed by the attorney-client privilege. *See* Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body maintains the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *See id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. *See* TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *See In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element.

Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *see id.* 503(b)(1),

meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *See id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

The TRCC claims that certain communications between attorneys representing the TRCC and its commissioners and staff were made in the furtherance of providing legal advice and are therefore excepted under section 552.107. Based on our review of the TRCC's representations and the information at issue, we find that the TRCC has shown that the communications at issue were made between privileged parties for the purpose of facilitating the rendition of professional legal services to the TRCC. However, as the information at issue was disclosed to the comptroller by the TRCC, we must determine whether the attorney-client privilege has been waived in the instance. *See In re Monsanto Co.*, 998 S.W.2d 917, 930 (Tex. App.—Waco 1999, orig. proceeding) (finding that disclosure of information to third party waives attorney-client privilege); *Jordan v. Court of Appeals for Fourth Supreme Judicial Dist.*, 701 S.W.2d 644, 649 (Tex. 1985) (finding that when communication is disclosed to third party, party asserting attorney-client privilege maintains burden of demonstrating that no waiver occurred); Open Records Decision Nos. 676 at 10-11 (where document has been voluntarily disclosed to opposing party, attorney-client privilege has generally been waived), 630 at 4 (1994) (governmental body may waive attorney-client privilege under section 552.107(1)), 522 at 4 (1989) (discretionary exceptions in general). In this case, in an attempt to cooperate with the comptroller and Representative Smith in carrying out their respective duties, we understand that the commission released information to the comptroller on the basis of a good-faith, though erroneous, belief that the investigation was within the comptroller's legal authority. Accordingly, we conclude that the commission did not waive the attorney-client privilege in this instance. Our analysis in support of this conclusion is as follows.

Rule 511 of the Texas Rules of Evidence provides that

[a] person upon whom these rules confer a privilege against disclosure waives the privilege if:

- (1) the person or a predecessor of the person while holder of the privilege voluntarily discloses or consents to disclosure of

any significant part of the privileged matter unless such disclosure itself is privileged; or

(2) the person or a representative of the person calls a person to whom privileged communications have been made to testify as to the person's character or character trait insofar as such communications are relevant to such character or character trait.

TEX. R. EVID. 511. Rule 512 of the Texas Rules of Evidence provides that “[a] claim of privilege is not defeated by a disclosure which was (1) compelled erroneously or (2) made without opportunity to claim the privilege.” TEX. R. EVID. 512. Thus, if in fact the comptroller had the authority to compel the TRCC to release the information at issue to the comptroller, or if the TRCC believed erroneously that the comptroller had such authority, then there would be no waiver of the privilege. *See id; cf. Riverside Hosp., v. Garza*, 894 S.W.2d 850, 857 (Tex. App.—Corpus Christi 1995, orig. proceeding) (finding that under rule 512 of Texas Rules of Evidence hospital did not waive discovery privilege in disclosing privileged information in prior case pursuant to court order, even if such order was erroneous).

As noted, the documents at issue consist of communications between and among TRCC attorneys and staff that were communicated to the comptroller. The TRCC does not argue that the comptroller is a privileged party to the communications. Rather, the TRCC claims that it “did not waive the protections afforded under the Act when it provided the documents [at issue] to the Comptroller The [TRCC] provided these documents in the spirit of cooperation with a sister state agency undertaking a review at the request of a legislator [and] considered this exchange to be within the interagency transfer exception to public disclosure of documents.”

As previously noted, we find that the comptroller did not have the specific legal authority to compel the TRCC to release the information for which the TRCC claims the attorney-client privilege. Thus, in light of these conclusions, we find that, when the TRCC released the attorney-client privileged information to the comptroller on the basis of what it believed to be the comptroller’s legal investigative authority, the TRCC’s release was compelled erroneously. Therefore, we conclude that under Rule 512, the TRCC did not waive its attorney-client privilege. Accordingly, we conclude that the information at issue, which we have marked, is excepted under section 552.107 of the Government Code.⁶

⁶As we are able to reach this determination under section 552.107, we need not address TRCC’s arguments under section 552.111 for this same information. We note in this regard that the remaining portion of the information for which the TRCC claimed section 552.111, but not section 552.107, identified by the TRCC in its brief to this office as “Exhibit K,” was not submitted by the comptroller to this office for our review. Therefore, this ruling does not address such information.

We next address the comptroller's arguments for withholding a portion of the submitted information under section 552.107. The comptroller asserts that a portion of the submitted documents, which the comptroller has marked, consists of communications between attorneys representing the comptroller and employees of the comptroller that were made for the purpose of rendering professional legal advice. Furthermore, the comptroller asserts that these communications were intended to be confidential and their confidentiality has been maintained. Based on these representations and our review of the information at issue, we agree that, as the information at issue consists of internal comptroller documents that have not been voluntarily disclosed to third parties, these marked documents are privileged attorney-client communications that the comptroller may withhold under section 552.107(1).

IV. Mandatory Exceptions

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. The TRCC argues that some of the information it provided to the comptroller is confidential under section 306.004 of the Government Code, which provides as follows:

(a) To ensure the right of the citizens of this state to petition state government, as guaranteed by Article I, Section 27, of the Texas Constitution, by protecting the confidentiality of communications of citizens with a member of the legislature or the lieutenant governor, the public disclosure of all or part of a written or otherwise recorded communication from a citizen of this state received by a member or the lieutenant governor in his official capacity is prohibited unless:

(1) the citizen expressly or by clear implication authorizes the disclosure;

(2) the communication is of a type that is expressly authorized by statute to be disclosed; or

(3) the official determines that the disclosure does not constitute an unwarranted invasion of personal privacy of the communicator or another person.

(b) This section does not apply to a communication to a member of the legislature or the lieutenant governor from a public official or public employee acting in an official capacity.

(c) A member or the lieutenant governor may elect to disclose all or part of a communication to which this section applies, and that disclosure does not violate the law of this state.

Gov't Code § 306.004(a)-(c).

Section 306.004(c) provides a member of the legislature with discretion to disclose all or parts of a record subject to section 306.004(a). This section contains no provision prohibiting the re-release of records once those records have been disclosed. The TRCC contends that some of the submitted information was received by members of the legislature from constituents and is therefore confidential under section 306.004. However, the TRCC also states that the constituent correspondence at issue was forwarded to the TRCC by members of the legislature. We assume that in releasing the information at issue to the TRCC, the legislators were acting within their discretionary authority as provided by section 306.004(c). We therefore conclude that the submitted constituent correspondence is not made confidential under section 306.004 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common law privacy. Information must be withheld from disclosure under the common law right to privacy when it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common law privacy. *See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).* We have marked the information that must be withheld under section 552.101 in conjunction with common law privacy.

Next, we address Pavlik's arguments against disclosure. Pavlik objects to the release of some of the documents that it has marked as "confidential." We note, however, that information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found.*, 540 S.W.2d at 677. In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See Attorney General Opinion JM-672 (1987).* Consequently, unless the information pertaining to Pavlik falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Pavlik also claims that its information is excepted from disclosure pursuant to section 552.110(b) of the Government Code. This section protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.* § 552.110(b); *see also Nat’l Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974); Open Records Decision No. 661 (1999) (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue).

Upon review of Pavlik’s arguments, we find that Pavlik has only provided conclusory assertions that release of its information would harm the company’s competitive interests and has not provided specific factual evidence to substantiate the claim that release of its information would result in competitive harm. Accordingly, we determine that the comptroller may not withhold any portion of Pavlik’s information under section 552.110(b). *See* ORD 661.

We note that portions of the remaining information that the comptroller obtained from the TRCC may be excepted from disclosure under section 552.117 of the Government Code.⁷ Section 552.117(a)(1) excepts from disclosure the home address, home telephone number, social security number, and family member information of an employee of a governmental body, provided the employee elected to keep such information confidential pursuant to section 552.024 of the Government Code prior to the date the governmental body received a request for the information. If the TRCC employees at issue made timely elections with the TRCC to keep the information we have marked confidential, such information remains confidential upon its transfer to the comptroller. *See* Open Records Decision No. No. 674 at 4-5 (2001); *see also* Open Records Decision No. 516 (1989) (Department of Public Safety did not violate confidentiality under predecessor of section 552.117(2) by transferring police officer’s home address to Attorney General’s Child Support Enforcement Office). Thus, in order to ascertain whether the information we have marked is confidential and cannot lawfully be released to the public, the comptroller must inquire with the TRCC as to whether the employees at issue timely elected under section 552.024 to keep the marked information confidential. To the extent that the employees at issue did make such timely elections, the comptroller must withhold the information we have marked pursuant to section 552.117(a)(1).

⁷This office will raise mandatory exceptions to disclosure behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

The remaining documents also include information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). Accordingly, the comptroller must withhold the Texas motor vehicle record information we have marked under section 552.130.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* We have marked the account and insurance policy numbers that the comptroller must withhold under section 552.136.

Section 552.137 of the Government Code 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). 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. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that the members of the public to whom the e-mail addresses at issue pertain have affirmatively consented to the release of these e-mail addresses. Therefore, the comptroller must withhold the e-mail addresses we have marked under section 552.137.⁸

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the comptroller must withhold the social security numbers contained in the submitted information under section 552.147.⁹

Finally, we note that some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A

⁸We note that one of the e-mail addresses at issue belongs to a requestor. Pursuant to section 552.023 of the Government Code, this requestor has a special right of access to her own e-mail address and it must be released to her. *See* Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person’s privacy interests).

⁹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the marked access identification codes and passwords, file names, I.P. addresses, and confidential access website addresses do not constitute public information under section 552.002 of the Government Code and need not be released to the requestors. The comptroller may withhold the documents it has marked under section 552.107(1) of the Government Code. The attorney-client privileged documents of the TRCC we have marked are also excepted under section 552.107(1) of the Government Code. The marked information must be withheld under section 552.101 of the Government Code in conjunction with common law privacy. To the extent that the personal information we have marked pertains to TRCC employees who made timely elections under section 552.024 of the Government Code to keep such information confidential, the comptroller must withhold this information under section 552.117(a)(1) of the Government Code. The marked Texas motor vehicle record information must be withheld under section 552.130 of the Government Code. The marked account and insurance policy numbers must be withheld under section 552.136 of the Government Code. The marked e-mail addresses must be withheld under section 552.137 of the Government Code. The submitted social security numbers must be withheld under section 552.147 of the Government Code. The remaining information must be released to the respective requestors, but any information protected by copyright must be released in accordance with copyright law.

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, 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); *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 Office of the Attorney General 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. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/sdk

Ref: ID# 246635

Enc. Submitted documents

c: Ms. Janet Ahmad
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