ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2006

Mr. John S. Schneider, Jr.
First Assistant City Attorney
City of Pasadena
P. O. Box 672
Pasadena, Texas 77501-0672

OR2006-04787

Dear Mr. Schneider:

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# 248723.

The City of Pasadena (the "city") received a request for "all sent and received e-mails and/or electronic communications for" a named city employee from January 1, 2005 to February 17, 2006. You inform us that the requestor clarified his request and indicated that he is "only interested in e-mails regarding personal matters and not business e-mails."[1] You claim the requested information is not subject to the Act, and in the alternative, portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[2] We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

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[1]Therefore, business e-mails are not responsive to the request and need not be released to the requestor.

[2]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.

You contend that the Act is not applicable to the requested e-mails. Section 552.002 of the Act defines "public information" as consisting of

> information that is collected, assembled, or maintained under a law or ordinance or in connection with the 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.

*Id.* § 552.002(a). You assert that the requested e-mails were not collected, assembled, or maintained under any law or ordinance or in connection with the transaction of any official business. You indicate that the requested information is simply an incidental use of e-mail by a city employee with regard to personal matters. Based on your representations and our review of the information at issue, we agree that the requested e-mails do not fall within the definition of public information under section 552.002. *Cf.* Open Records Decision No. 635 at 8 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimus* use of state resources). Therefore, the Act does not require the city to release the requested 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, 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,

Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 248723

Enc. Submitted documents

c: Mr. Clifton Meekins
4907 Orange Tree Drive
Pasadena, Texas 77505
(w/o enclosures)