



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2006

Ms. Lona Chastain
Open Records Coordinator
Assistant General Counsel
Texas Workforce Commission
101 E. 15th Street
Austin, Texas 78778-0001

OR2006-05957

Dear Ms. Chastain:

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# 250835.

The Texas Workforce Commission (the "commission") received a request for the contract or subscription agreement for computer and hardcopy services between Gallery Watch Legislative Tracking Service ("Gallery Watch") and the commission for the 79th Legislative Session and interim service for 2005 through 2006. You claim that the requested information may contain the proprietary information of a third party. Although you do not submit any arguments regarding the proprietary nature of the information, you have notified third party Gallery Watch of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). We have reviewed the submitted information.

Initially, we note that although you did not submit any arguments regarding section 552.137 of the Government Code, you have marked an e-mail address contained in the submitted information that you seek to withhold under that exception. We note that a governmental body is required to submit to this office written comments stating the reasons why the

claimed exceptions apply that would allow the information to be withheld. *See* Gov't Code § 552.301(e)(1)(A). Generally, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the waiver of discretionary exceptions to disclosure. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Section 552.137 of the Government Code is a mandatory exception and is not waived by a governmental body's failure to comply with section 552.301. *See* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions); *see generally* Open Records Decision No. 150 (1977) (compelling reason may exist to withhold information when information is confidential under other law or third party interests are affected). Therefore, we will address the applicability of section 552.137 to the information you have marked.

Next, we note that an interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Gallery Watch has not submitted comments to this office explaining why any portion of the submitted information should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate Gallery Watch's proprietary interests. *See* Gov't Code § 552.110; Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we conclude that the department may not withhold any portion of the submitted information on the basis of any proprietary interest that Gallery Watch may have in the information.

Lastly, we address the applicability of section 552.137 of the Government Code to the e-mail address you have marked. This exception 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

Gov't Code § 552.137(a)-(c). Thus, section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. Section 552.137 does not except from disclosure the types of e-mail addresses that are listed in section 552.137(c). The e-mail address at issue falls within the scope of section 552.137(c). Therefore, section 552.137 is not applicable to the e-mail address. Accordingly, the commission must release the submitted 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(t). 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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 250835

Enc. Submitted documents

c: Ms. Theresa Lucas
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(w/o enclosures)