



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2006

Mr. David K. Walker
County Attorney
Montgomery County
207 West Phillips, 1st Floor
Conroe, Texas 77301

OR2006-10915

Dear Mr. Walker:

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# 259576.

Montgomery County (the "county") received a request for all electronic mail communications sent and received by the offices of Montgomery County Commissioner Precinct 4 from February 9, 2006 to March 6, 2006. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the county has submitted information which is not responsive to the present request. The request at issue seeks electronic mail communications sent and received from February 9, 2006 to March 6, 2006. Accordingly, any communications that were sent or received outside of these dates are not responsive to the present request. This ruling does not address the public availability of information that is not responsive to the request, and the county need not release such information, which we have marked, in response to the request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Next, we address your contention that a portion of the responsive information is not public information subject to disclosure under the Act. The Act only applies to public information.

See Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as "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.

You argue that Exhibit F consists of personal e-mails sent or received by county employees that were not connected with the transaction of government business. Based on your representations and our review of the submitted e-mails, we agree that some of these communications, which we have marked, do not relate to the transaction of official county business, and therefore do not constitute public information of the county. Consequently, the county is not required to disclose these marked e-mails under the Act. See Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving de minimis use of state resources). However, we find the remaining communications do constitute public information, as defined by section 552.002. Thus, we will address the exceptions you raise for this information.

Next, we note, and you acknowledge, that the county has not complied with the time periods prescribed by section 552.301(b) and section 552.301(e) of the Government Code in requesting a decision from this office. When a governmental body fails to comply with the procedural requirement of section 552.301, the information at issue is presumed public. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. See Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because sections 552.101 and 552.137 of the Government Code can provide compelling reasons to withhold information, we will address your arguments concerning these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if 1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and 2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Upon review, we conclude that the county has failed to demonstrate how any portion of the remaining submitted information constitutes highly intimate or embarrassing information for the purpose of common-law privacy. Thus, no portion of the remaining submitted information may be withheld on this basis.

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. In addition, section 552.137 does not apply to a business’s general e-mail or website address. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). Therefore, unless the individuals whose e-mail addresses are at issue have consented to its release, the county must withhold the e-mail addresses we have marked in Exhibits F and G under section 552.137. Some of the marked e-mail addresses, however, are associated with a public university. If these individuals are employees of the university, then their e-mail addresses are not excepted under section 552.137 and must be released. If these individuals are students of the university, then their e-mail addresses are excepted from disclosure under section 552.137 and must be withheld.

In summary, the county is not required to disclose the non-responsive information we have marked or the e-mails in Exhibit F we have marked as they are not subject to the Act. The county must withhold the e-mail addresses we have marked in Exhibits F and G pursuant to section 552.137 of the Government Code. The remaining information must be released 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# 259576

Enc. Submitted documents

c: Mr. Jim Jenkins
20519 Sunshine Lane
Spring, Texas 77388
(w/o enclosures)