



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2006

Ms. Karey Nalle Oddo
Winstead Sechrest & Minick, P.C.
401 Congress Avenue, Suite 2100
Austin, Texas 78701

OR2006-11654

Dear Ms. Oddo:

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# 261177.

The Fern Bluff Municipal Utility District (the "district"), which you represent, received a request for e-mails received from a named individual. You claim that the requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note that the purpose of the Act is to prescribe conditions under which members of the general public can obtain information from a governmental body. *See* Attorney General Opinion JM-119 (1983) (statutory predecessor). An official of a governmental body who, in an official capacity, requests information held by the governmental body does not act as a member of the public in doing so. Thus, exceptions to public disclosure under the Act do not control the right of access of an official of a governmental body to information maintained by the governmental body. *See id.* at 3 (member of community college district board of trustees, acting in official capacity, has an inherent right of access to information maintained by district).

In this instance, you state that the district assumes that the requestor is seeking information in her official capacity as a member of the district's board of directors and nothing in the submitted records contradicts that assumption. We conclude that the requestor is seeking the information in her official capacity. Thus, she has an inherent right of access to the

information and it must be provided to her. The release of this information in this specific instance does not constitute a release to the general public and, as such, the district waives none of the possible exceptions to the disclosure of this information. *See* Open Records Decision No. 666 at 4 (2000) (municipality's disclosure to a municipally-appointed citizen advisory board does not constitute a release to the public as contemplated under section 552.007 of the Government Code). Because the release of this information to a member of the district's board of directors is not a release to the public, the requestor must be cautious in maintaining the documents in the same manner as they are maintained by the district.¹ *See generally* Gov't Code § 552.352 (criminal penalties imposed for release of confidential information).

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).

¹ As our ruling is dispositive, we need not address the district's arguments against disclosure. Furthermore, we do not rule on the requestor's right to access or copies under the Act.

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,

A handwritten signature in black ink that reads "Shelli Egger". The signature is written in a cursive style with a large, looped "E" at the end.

Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 261177

Enc. Submitted documents

c: Ms. Jean I. Cochran
2603 Harborside Drive
Granbury, Texas 76048
(w/o enclosures)