



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2008

Mr. Kevin McCalla
General Law Division
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711

OR2008-02028

Dear Mr. McCalla:

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 #302074.

The Texas Commission on Environmental Quality (the "commission") received a request for information pertaining to overpayments by the commission for a specified contract involving the requestor's company, including year one and year two audits. You state that you are releasing most of the requested information to the requestor. You state that the requested year two audit was never conducted.¹ You claim that the submitted year one audit is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

As a preliminary matter, you contend that the request at issue was not a valid request under the Act because the request was delivered via e-mail to the commission's contract manager instead of the commission's Open Records Section or the Officer of Public Information. Section 552.301(c) provides that "a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

electronic mail or facsimile transmission.” *Id.* §552.301(c). We generally agree that a request for information sent via e-mail must be addressed to the officer for public information or a person designated by that officer in order to be valid under the Act. However, in this instance, you acknowledge that the commission has already released information to the requestor in response to this e-mail. Thus, the commission has determined that this e-mail is a valid request for information under the Act. We find that the commission may not now argue that this e-mail was never a valid request, and we therefore rule that the commission must continue to process the present request as provided under the Act.

Next, we note that the submitted audit is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

Gov’t Code § 552.022(a)(1). As you acknowledge, the submitted information consists of a completed audit. Section 552.022 makes this information expressly public unless it is confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Although you seek to withhold the submitted audit under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the commission may not withhold any of the submitted information under section 552.103. As you raise no further exceptions to disclosure, the submitted audit 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 file suit in

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 302074

Enc. Submitted documents

c: Ms. Beverly Benson
President
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(w/o enclosures)