



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2008

Mr. Henry W. Prejean
Assistant District Attorney
Brazoria County
County Courthouse
111 East Locust, Suite 408-A
Angleton, Texas 77515

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2008-14691

Dear Mr. Prejean:

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# 326686.

The Brazoria County Juvenile Probation Department and the Brazoria County District Attorney's Office (collectively the "county") each received a request for e-mails and documented text messages or images sent to two county employees by a named judge. You state that you will provide the requestor with a portion of the requested information. You claim that the remaining information is not subject to the Act.¹ We have considered the argument you make and reviewed the submitted representative sample of information.²

The Act is only applicable to "public information." *See* Gov't Code § 552.021. Section 552.002(a) 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(a). Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if it is maintained for a governmental body, the governmental body owns or has a right

¹Although you initially raised sections 552.101, 552.103, 552.108, and 552.111 of the Government Code, in subsequent correspondence with our office you did not provide arguments explaining how these exceptions apply to the submitted information. Therefore, we presume you no longer assert these exceptions. *See* Gov't Code §§ 552.301, .302.

²We 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.

of access to the information, and the information pertains to the transaction of official business. *See* Open Records Decision No. 462 (1987).

You argue that the information at issue consists of “personal e-mail messages that do not contain information collected, assembled, or maintained in connection with the transaction of official business.” However, we note, and you acknowledge, that the information requested in this instance all pertains to recent charges of official oppression filed by the county against the judge at issue. Accordingly, the county collected the e-mails at issue in the course of conducting its official business, and therefore, the e-mails are public information subject to the Act.

We note, however, that the information at issue contains e-mail addresses. 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). Gov’t Code § 552.137(a)-(c). The e-mail addresses we have marked are not a type specifically excluded by section 552.137(c) of the Government Code. Therefore, the county must withhold the marked e-mail addresses in accordance with section 552.137 unless the county receives consent for their release.

In summary, the county must withhold the marked e-mail addresses pursuant to section 552.137 unless the county receives consent for their release. The remaining information must be released.

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). If the governmental body does not file suit over 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jb

Ref: ID# 326686

Enc. Submitted documents

c: Mr. John Tompkins
The Facts
P.O. Box 549
Clute, Texas 77531
(w/o enclosures)

CAUSE NO. D-1-GV-08-002599

JERI YENNE, CRIMINAL DISTRICT
ATTORNEY OF BRAZORIA COUNTY,
TEXAS,

Plaintiff,

v.

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS,

Defendant.

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IN THE DISTRICT COURT

345th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

Filed in The District Court
of Travis County, Texas
JL JAN 31 2013
At 1:40 P.M.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Jeri Yenne, Criminal District Attorney of Brazoria County, Texas (Yenne), sought to withhold certain information from public disclosure. All matters in controversy between Plaintiff, Yenne, and Defendant, Greg Abbott, Attorney General of Texas, arising out of this lawsuit have been resolved, and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Mr. John Tompkins, on January 10, 2013, informing him of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that Yenne must release the June 27, 2008 email, with private e-mail addresses redacted, but must withhold the 23 attached photographs and instead release a description of the photographs, which will read "photographs of naked women." The requestor was also informed of his right to intervene in the suit to

contest the withholding of this information. A copy of the certified mail receipt is attached to this motion.

The requestor has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. Tex. Gov't Code § 552.325(d) requires the Court to allow a requestor a reasonable period to intervene after notice is attempted by the Attorney General. A copy of the certified mail receipt is attached to this agreed final judgment.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

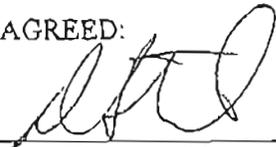
1. Yenne and the Attorney General have agreed that in accordance with the PIA and under the facts presented, Yenne must release the June 27, 2008 email, with private e-mail addresses redacted, but must withhold the 23 attached photographs and instead release a description of the photographs, which will read "photographs of naked women." The photographs are excepted from disclosure pursuant to Tex. Gov't Code § 552.101, in conjunction with common-law privacy.
2. Yenne must withhold from the requestor the information described in Paragraph 1 of this judgment.
3. All court cost and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between Yenne and the Attorney General which are the subject of this lawsuit and is a final judgment.

SIGNED this 31 day of JANUARY, 2013.



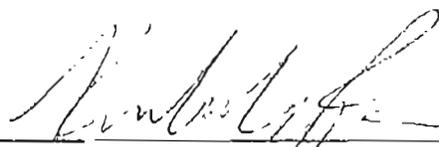
PRESIDING JUDGE

AGREED:



Donald A. Stricklin
State Bar No. 24003018
Assistant District Attorney
111 E. Locust, Suite 408A
Angleton, Texas 77515
Telephone: (979) 864-1230
Facsimile: (979) 864-1712

ATTORNEY FOR PLAINTIFF



Kimberly Fuchs
State Bar No. 24044140
Chief, Open Records Litigation
Administrative Law Division
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ATTORNEY FOR DEFENDANT

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YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
7007149000007963023		Delivered	January 14, 2013, 10:23 am	CLUTE, TX 77531	Certified Mail™
		Notice Left	January 12, 2013, 11:14 am	CLUTE, TX 77531	
		Arrival at Unit	January 12, 2013, 11:02 am	CLUTE, TX 77531	

Check on Another Item

What's your label (or receipt) number?



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- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JOHN TOMPKINS
The Facts
P.O. Box 549
Clute, Texas 77531
[BrazoriaDA]: [Req Ltr 1-Settlement]

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 Sue MacHalek Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery
Sue MacHalek

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below. No

9. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7007 1490 0000 0796 3023