



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 14, 2008

Honorable Abel Herrero  
State Representative  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

OR2008-15699

Dear Representative Herrero:

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# 326332.

Representative Herrero (the "representative") received a request for (1) e-mails sent to or received by the representative's former chief of staff during his employment; (2) copies of the representative's official state calendar since January 1, 2007; (3) correspondence between the representative and the Texas Health and Human Services Commission (the "commission"), Texas Department of Aging and Disability Services ("DADS"), Texas Department of State Health Services ("DSHS"), and Texas Department of Assistive and Rehabilitation Services ("DARS"); (4) correspondence between the representative and the City of Robstown; (5) correspondence between the representative and the Robstown Improvement Development Corporation; (6) correspondence mentioning Saint Benedict's Home Health Inc., Superior Health Plan, or Evercare Health Plan; and (7) correspondence between the representative and the House Committee of General Investigating and Ethics. You claim that the submitted information is excepted from disclosure under sections 552.008, 552.101, 552.106, 552.107, 552.111, and 552.116 of the Government Code.<sup>1</sup> In addition, you state that have notified "all of the [state] agencies incorporated into the request." See Gov't Code § 552.304 (interested party may submit comments stating why

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<sup>1</sup>We assume that, to the extent any additional responsive information existed when the representative received the request for information, you have released it to the requestor. If not, then you must do so immediately. See Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

information should or should not be released). You also indicate that the requested information may implicate the interests of Accenture, LLP or Maximus, Inc, and that you have notified these third parties of their right to submit arguments to this office as to why the requested information should not be released to the requestor. *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 in Act in certain circumstances). We have received correspondence from DADS and the commission. We have considered the submitted arguments and reviewed the submitted information.<sup>2</sup>

Initially, we note that some of the submitted information is not responsive because it was created after the date of the representative's receipt of the request for information. We have marked the non-responsive information. This ruling does not address the public availability of any information that is not responsive to the request and the representative is not required to release that information in response to the request. Further, we note that DADS has submitted information it seeks to withhold from disclosure; however, the representative did not submit this information. This ruling does not address information that was not submitted by the representative and is limited to the information submitted as responsive by the representative. *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

Next, we address the representative's and the commission's contention that some of the submitted information has been previously ruled upon in Open Records Letter No. 2005-08573 (2005). In that ruling we concluded that portions of the commission's contract with Accenture were confidential under section 552.110(b).<sup>3</sup> In this instance the information at issue in Open Records Letter No. 2005-08573 is now maintained by the representative. However, the representative obtained this information for legislative purposes pursuant to section 552.008 of the Government Code. *See* Gov't Code § 552.008. We note that section 552.008 does not affect the confidentiality of information for the purposes of state or federal law. *Id.* § 552.008(b). Accordingly, because this office previously determined that this information was confidential based on the third party proprietary interests of Accenture, we conclude that the representative must also withhold

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<sup>2</sup>We assume that the "representative sample" or 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.

<sup>3</sup>Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b).

the portions of the commission's contract with Accenture that we found confidential in Open Records Letter No. 2005-08573 pursuant to section 552.110(b) of the Government Code.<sup>4</sup>

We note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of the records indicate, you have been authorized to withhold any of the redacted information without seeking a ruling from this office. *See id.* § 552.301(a); ORD 673. As such, the information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the representative should refrain from redacting any information it submits to this office in seeking an open records ruling. Redaction of such information may result in a determination that the information must be released. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

We now must address the representative's procedural obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code § 552.301(e)*. You state that the representative received the request on August 12, 2008. However, you did not submit a copy or representative sample of some of the requested information until September 22, 2008. Accordingly, with respect to the information that was not timely submitted, we conclude that the representative failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990,

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<sup>4</sup>The information found confidential in Open Records Letter No. 2005-08573 included Accenture's Cost Schedules A-1, A-2, and A-3 (submitted in the original proposal on September 30, 2004), as well as the Cost Submission #2 (dated January 17, 2005), Cost Submission #3 (dated January 26, 2005), Cost Submission #4 (dated February 7, 2005), and Cost Submission #5 (dated February 21, 2005).

no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will consider the applicability of this exception to the information that was not timely submitted. Additionally, as DADS, an interested third-party, has submitted arguments for withholding the information that was not timely submitted, we will also consider its arguments against disclosure of this information. See Open Records Decision No. 586 (1991) (need of governmental body, other than body that failed to timely seek open records decision, may be compelling reason for non-disclosure).

We next note that an interested third-party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) 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, we have not received arguments from Accenture, LLP or Maximus, Inc. Therefore, these companies have not provided us with any basis to conclude they have protected proprietary interests in any of the submitted information. See Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, we conclude the representative may not withhold any portion of the submitted information on the basis of any proprietary interest these companies may have in the information.

We now address your assertion that the remaining submitted information is confidential pursuant to section 552.008 of the Government Code. We note that section 552.008 is not an exception to disclosure under subchapter C of the Act. See Gov't Code § 552.101 *et seq.* Instead, section 552.008 grants access to information held by a governmental body, including confidential information, to individual members, agencies, or committees of the Texas Legislature to be used for legislative purposes. See *id.* § 552.008(a) (Act does not grant authority to withhold information from individual members, agencies, or committees of legislature to use for legislative purposes). We note that section 552.008 permits a governmental body to require a member of the legislature, legislative agency, or committee to sign a confidentiality agreement for the protection of information obtained pursuant to this section. See *id.* § 552.008(b). Section 552.008 does not authorize information to be made confidential by agreement. Rather, it permits the execution of an agreement to maintain the confidentiality of information that is otherwise confidential under other law. You state that you "do not recall and have no record of being required by the producing agenc[ies] to sign a confidentiality agreement before obtaining the information [at issue]." Therefore, the representative may not withhold any of the remaining information on the basis of section 552.008 of the Government Code.

The representative seeks to withhold Exhibit D under section 552.106 of the Government Code, which excepts from disclosure “[a] draft or working paper involved in the preparation of proposed legislation[.]” *Id.* § 552.106(a). Section 552.106 protects advice, opinion, and recommendation on policy matters in order to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body. *See* Open Records Decision No. 460 at 3 (1987). Therefore, section 552.106 is applicable only to the policy judgments, recommendations, and proposals of persons who are involved in the preparation of proposed legislation and who have an official responsibility to provide such information to members of the legislative body. *Id.* at 1. Section 552.106 does not protect purely factual information from public disclosure. *See id.* at 2; *see also* Open Records Decision No. 344 at 3-4 (1982) (for purposes of statutory predecessor, factual information prepared by State Property Tax Board did not reflect policy judgments, recommendations, or proposals concerning drafting of legislation). However, a comparison or analysis of factual information prepared to support proposed legislation is within the scope of section 552.106. ORD 460 at 2. This office has also concluded that the drafts of municipal ordinances and resolutions which reflect policy judgments, recommendations, and proposals are excepted by section 552.106. Open Records Decision No. 248 (1980).

You state that Exhibit D consists of “interoffice correspondence [and] working papers involved in preparing proposed legislation” created by the representative and his staff. Based on these representations and our review, we conclude that some of the information at issue constitutes advice, opinion, analysis, and recommendation regarding proposed legislation. Therefore, the representative may withhold the information we have marked in Exhibit D under section 552.106. You have not demonstrated, however, how the remaining information, which consists of purely factual or administrative information, constitutes drafts or working papers involved in the preparation of proposed legislation; therefore, the remaining information in Exhibit D may not be withheld on this basis.

You assert that the remaining information in Exhibit D is excepted under sections 552.107 and 552.111 of the Government Code. Section 552.107 protects information coming within the attorney-client privilege. Gov’t Code § 552.107. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002).

First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in capacity other than that of attorney).

Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A)-(E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5).

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

Upon review, we find that the representative has failed to demonstrate how any of the information at issue constitutes confidential communications between privileged parties made for the purpose of facilitating the rendition of professional legal services. Therefore, the representative may not withhold any of the remaining information in Exhibit D under section 552.107 of the Government Code.

Section 552.111 of the Government Code excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. *See Open Records Decision No. 615 at 2 (1993)*. The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); *Open Records Decision No. 538 at 1-2 (1990)*.

In *Open Records Decision No. 615*, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See ORD 615 at 5*. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and

disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. See ORD No. 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

You assert that the remaining information in Exhibit D contains advice, opinion, and recommendations on policymaking issues. We find, however, that the remaining information consists of only factual information. Thus, you have not demonstrated how the remaining information consists of advice, opinion, or recommendation about a policymaking decision; therefore, the representative may not withhold the remaining information in Exhibit D under section 552.111.

Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You contend that the information submitted in Exhibit B constitutes audit working papers prepared or maintained as part of an audit conducted by a third party authorized by the commission and the commission's "self-audit". We note, however, that section 552.116 is intended to protect the auditor's interests. We also note the audits were authorized or conducted by the commission and not by the representative. The information at issue is only maintained by the representative. In this instance, the representative cannot assert section 552.116 in order to protect the information at issue. Further, the commission has not informed our office that it seeks to withhold the information at issue under section 552.116. Accordingly, section 552.116 is inapplicable and does not protect Exhibit B from disclosure.

We now turn to the arguments submitted by DADS and the commission. DADS asserts that portions of the remaining information are excepted from disclosure pursuant to section 552.103 of the Government Code. Section 552.103 of the Government Code provides:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997,

no pet.); *Heard v. Houston Post Co.*, 684S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). In the context of anticipated litigation by a governmental body, the concrete evidence must at least reflect that litigation is “realistically contemplated.” *See* Open Records Decision No. 518 at 5 (1989); *see also* Attorney General Opinion MW-575 (1982) (finding that investigatory file may be withheld from disclosure if governmental body attorney determines that it should be withheld pursuant to section 552.103 and that litigation is “reasonably likely to result”). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* ORD 452 at 4.

In situations such as this, in which the governmental body that received the request has no litigation interest in the information at issue, we require a representation from the governmental body whose litigation interests are at stake. DADS asserts that information pertaining to the Corpus Christi State School is excepted from disclosure under section 552.103. DADS states that prior to the instant request, it was subject to action by the United States Department of Justice (“DOJ”) “under the Civil Rights of Institutionalized Persons Act (“CRIPA”) . . . by virtue of the DOJ’s investigation into and report on conditions at the Lubbock State School.” DADS states that under CRIPA, the DOJ’s time frame for filing a lawsuit has not elapsed, and “it is likely that the DOJ will file a lawsuit in federal court to incorporate the settlement agreement into a judgment enforceable by the court, as that is the DOJ’s usual practice in CRIPA investigations.” DADS further explains that it is currently “anticipating federal CRIPA litigation and/or settlement negotiations with respect to the [Corpus Christi State School]” as well. DADS states that this litigation is anticipated because on March 11, 2008, the DOJ informed Governor Rick Perry that it is commencing an investigation into the “conditions of care and treatment of residents at the Denton State School, pursuant to [its] authority under [CRIPA].” DADS argues that this letter to the Governor is analogous to a notice letter under the Texas Tort Claims Act. In addition, DADS has provided this office with a copy of a similar letter from the DOJ dated August 20, 2008, indicating that CRIPA investigations would be taken on the remaining facilities in the state, including Corpus Christi State School. DADS asserts that “based on the procedures employed by the DOJ in its investigation of Lubbock, litigation relating to Corpus Christi State School is reasonably anticipated.” Based on DADS’s representations and our review, we determine that DADS reasonably anticipated litigation on the date that the representative received this request for information. Furthermore, upon review of the information at issue, we find that the submitted information relates to the anticipated litigation to the extent that it concerns the Corpus Christi State School. Accordingly, we

conclude that the representative may withhold the information we have marked pursuant to section 552.103.<sup>5</sup>

We note, however, that once information has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends when the litigation has concluded or is no longer reasonably anticipated. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

The commission contends that a portion of the remaining submitted information consists of Medicaid, food stamp, and TANF client information. 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. Section 552.101 encompasses information made confidential by statutes such as sections 12.003 and 21.012 of the Human Resources Code, which the commission states excepts a portion of the remaining information. Section 12.003 provides in relevant part:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a) (emphasis added). In Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on disclosure of the names of the department's clients clearly expresses a legislative intent to encompass the broadest range of individual client information and not merely the clients' names and addresses." Open Records Decision No. 584 at 3 (1991). Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. See 42 U.S.C. § 1396a(a)(7) (state plan for medical assistance must provide safeguards that restrict use or disclosure of information concerning applicants and recipients to purposes directly connected with administration of plan); 42 C.F.R. § 431.300 *et seq.*; Hum. Res. Code § 21.012(a) (requiring provision of safeguards that restrict use or disclosure of information concerning

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<sup>5</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

applicants for or recipients of assistance programs to purposes directly connected with administration of programs); Open Records Decision No. 166 (1977).

The commission states that some of the information at issue relates to or could identify recipients of commission benefits. The commission also informs us that in this instance the release of the information in question would not be for a purpose directly connected with the administration of the programs to which the information pertains. Based on the commission's representations and our review, we have marked the information that is confidential under section 12.003 of the Human Resources Code and must be withheld under section 552.101 of the Government Code. However, we find that the commission has failed to demonstrate how any of the remaining information at issue discloses information concerning individual applicants and recipients of commission benefits. Therefore, the representative may not withhold any of the remaining information under section 552.101 in conjunction with sections 12.003 and 21.012 of the Human Resources Code.

We note that portions of the remaining information are subject to sections 552.136 and 552.137 of the Government Code.<sup>6</sup> Section 552.136 states that "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). An access device number is one that may be used to "(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). We have marked the information that the representative must withhold under section 552.136.

Section 552.137 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). *Id.* § 552.137(a)-(c). We note that 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. This section does not protect the work e-mail addresses of the employees of an entity with which a governmental body has a contractual relationship. *Id.* § 552.137(c)(1). We have marked e-mail addresses that the representative must withhold under section 552.137, unless the owner of an e-mail address has affirmatively consented to its public disclosure.

Finally, we note that some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987).

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<sup>6</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, representative must withhold the portions of the commission's contract with Accenture that we found confidential in Open Records Letter No. 2005-08573 pursuant to section 552.110(b) of the Government Code. The representative must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with section 12.003 of the Human Resources Code. The representative may withhold the information we have marked under sections 552.103 and 552.106 of the Government Code. The representative must withhold the information we have marked under section 552.136 of the Government Code. The representative must also withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owner of an e-mail address has affirmatively consented to its disclosure. The remaining responsive information must be released, but any information protected by copyright must be released in accordance with copyright law.

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,



Paige Savoie  
Assistant Attorney General  
Open Records Division

PS/ma

Ref: ID# 326332

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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