



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2009

Ms. Sharon Coffee Baxter
Litigation Attorney
Travis Central Appraisal District
P.O. Box 149012
Austin, Texas 78714

OR2009-07533

Dear Ms. Baxter:

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# 344855.

The Travis Central Appraisal District (the "district") received a request for the e-mail addresses redacted in documents that were previously released to the requestor. You assert that the requested information is not subject to the Act, and you also claim that the requested information is excepted from disclosure under section 552.137 of the Government Code.¹ We have considered your arguments and reviewed the submitted information.

Initially, we note that the submitted information contains information other than e-mail addresses. The request only asks for e-mail addresses. Thus, only the submitted e-mail addresses are responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release that information in response to this request.

¹While you raise section 552.101 in conjunction with sections 552.002 and 552.137, we note that section 552.101 of the Government Code does not encompass other sections of the Act. We further note section 552.002 is not an exception to public disclosure under the Act. Rather, section 552.002 is a provision of the Act that defines "public information" for purposes of the Act.

The district claims that the requested e-mail addresses are not public information subject to disclosure under the Act. The Act is applicable to "public information." See Gov't Code § 552.021. "Public information" is defined 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 is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. See Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business). In this instance, the information at issue was provided to the district for the purpose of communicating with the district. Further, the responsive information is in the possession of the district, which is a governmental body as defined by section 552.003, and was collected, assembled, or maintained in connection with the transaction of the district's official business. We therefore determine the information at issue is public information as defined by section 552.002 of the Government Code. Gov't Code § 552.002(a). Thus, the information at issue is subject to the Act and must be released, unless an exception to disclosure is shown to be applicable.

Next, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. See Gov't Code § 552.301(a), (b). In addition, pursuant to section 552.301(e) of the Government Code, 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. *Id.* § 552.301(e)(1)(A)-(D).

You state that the present request was received by the district on March 16, 2009. However, the submitted information reflects, and you acknowledge, that the requestor made a previous request on February 26, 2009 for any correspondence between district board members and district staff for a specified time period. While you submitted the February 26, 2009 request

to this office for a ruling, you do not inform us, nor do our records indicate, that the department asked this office for a decision in connection with the e-mail addresses that are at issue in this request. *See id.* § 552.301(b). Rather, you state that you released the submitted documents with redactions in response to the request of February 26, 2009. However, the redactions were not authorized either by this office in an open records ruling or pursuant to a previous determination. Although you treated the March 16 letter as a second request, we find that the e-mail addresses at issue were responsive to the February 26, 2009 request. Accordingly, we find the district failed to comply with the procedural requirements of section 552.301 because you failed to request a decision from this office or submit the information required by section 552.301(e) within the statutory deadlines for the e-mail addresses you now seek to withhold.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos.* 630 at 3 (1994), 325 at 2 (1982). Because the district's claim under section 552.137 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will consider the applicability of this exception to the responsive information.

You claim that the e-mail addresses you have marked are excepted from public disclosure under section 552.137 of the Government Code. 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). *See Gov't Code* § 552.137(a)-(c). Section 552.137 also excepts personal e-mail addresses of officers or employees of a governmental body unless the officer or employee has consented to its release. Section 552.137 is not applicable to an e-mail address that a governmental entity maintains for one of its officials or employees. You state the e-mail addresses at issue are the personal e-mail addresses of board members. We note that some of the e-mail addresses you have marked are the work e-mail addresses of government employees. We have marked these for release. Thus, with the exception of the information we have marked for release, the district must withhold the remaining e-mail addresses you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/

Ref: ID#344855

Enc. Submitted documents

c: Requestor
(w/o enclosures)