



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2009

Ms. Martha T. Williams
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2009-09618

Dear Ms. Williams:

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# 348741.

The City of Tomball (the "city"), which you represent, received a request for communications to city-supplied cellular telephones and to the Offices of the City Manager and City Secretary on April 21 and 22, 2009. You state the majority of the responsive information has been released. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert the submitted application for a ballot to vote by mail is made confidential by section 86.014 of the Election Code. Section 86.014 provides in relevant part:

(a) A copy of an application for a ballot to be voted by mail may be obtained from the early voting clerk:

(1) 72 hours after the time a ballot is mailed to the voter; or

(2) 48 hours after the time a ballot is mailed to the voter if the mailing occurs on the fourth day before election day.

(b) Originals of the applications and carrier envelopes are not available for public inspection until those materials are delivered to the general custodian of election records after the election.

Elec. Code § 86.014. You indicate the application at issue is a copy of the citizen's actual application for a ballot to vote by mail. Section 86.014(a) of the Election Code provides an

application for a ballot to vote by mail is publicly available either 72 or 48 hours following the mailing of the ballot in response to the application. We understand you to assert because the request was received before the ballot was mailed, the application at issue is confidential under section 86.014(a). However, section 86.014 of the Election Code does not make information confidential. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also* Open Records Decision No. 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as public information). Rather, the statute provides for the availability of a copy of the application for a ballot to vote by mail following the applicable time period. Elec. Code § 86.014(a). Accordingly, because it appears the applicable time periods have expired for the application at issue, the application is generally publicly available. *Cf.* Open Records Decision No. 505 at 4 (request made during the preservation period to inspect voted ballots must be treated as a request to inspect the ballots when the retention period expires).

You assert, however, that the submitted information, including the submitted application for a ballot to vote by mail, is excepted from public disclosure pursuant to section 552.101 in conjunction with section 87.121(f) of the Election Code. Section 87.121 provides in relevant part:

(a) The early voting clerk shall maintain for each election a roster listing each person who votes an early voting ballot by personal appearance and a roster listing each person to whom an early voting ballot to be voted by mail is sent.

(b) For each person listed, the applicable roster must include:

(1) the person's name, address, and voter registration number;

(2) an identification of the person's county election precinct of registration; and

(3) the date of voting or the date the ballot was mailed to the person, as applicable.

...

(f) Information on the roster for a person to whom an early voting mail ballot has been sent is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until the first business day after election day.

Elec. Code § 87.121(a), (b), (f). We understand you to argue that, regardless of the applicability of section 86.014(a), section 87.121(f) makes confidential the information within the submitted application for a ballot to vote by mail. However, section 87.121(f) only applies to the election rosters described in section 87.121(a). *Id.* § 87.121(f). Section 87.014 prescribes the public availability of an application for a ballot to vote by mail. *Id.* § 86.014. Thus, we conclude the submitted application must be released in accordance with section 86.014(a) of the Election Code. The remaining submitted information consists of e-mail communications. Because none of these e-mails are an election roster as described in section 87.121(a) of the Election Code, we conclude section 87.121(f) is inapplicable to the submitted e-mails as well.

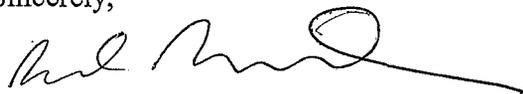
The submitted e-mails contain private e-mail addresses subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member 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). The e-mail addresses at issue are not specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owner of the e-mail addresses has affirmatively consented to their disclosure.

In summary, the city must withhold the private e-mail addresses we marked under section 552.137(c). The remaining information must be released.

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 348741

Enc. Submitted documents

cc: Requestor
(w/o enclosures)