



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2009

Mr. David M. Swope
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2009-10955

Dear Mr. Swope:

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# 351320.

Harris County Commissioner Sylvia Garcia (the "commissioner") received a request for "all records of calendar information" including the commissioner's public schedule, private calendars, appointment records, and meeting schedules from January 1, 2008 to May 8, 2009 in paper and in digital form. You claim that portions of the submitted information are not subject to the Act, and that the remaining responsive information will be released to the requestor. We have considered your argument and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that a person may submit comments stating why information should or should not be released).

You argue that the entries you have marked in the submitted calendar are not public information subject to the Act. *See* Gov't Code § 552.021 (Act is only applicable to public information). Section 552.002 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." Gov't Code § 552.022. You assert that the entries you have marked are personal in nature and do not constitute information that is collected, assembled, or maintained under a law ordinance or in connection with the transaction of official business by or for the commissioner. Based on

your representations and our review of the information at issue, we agree that the entries you have marked in the submitted calendar do not constitute "public information" that is subject to the Act. Consequently, the commissioner is not required to disclose these entries under the Act. Cf. Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources).

We note that a portion of the remaining submitted information contains e-mail addresses subject to section 552.137 of the Government Code.¹ 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). These addresses are not a type specifically excluded by section 552.137. Accordingly, the commissioner must withhold the e-mail addresses we have marked under section 552.137, unless the owners of the addresses have affirmatively consented to their release. See *id.* § 552.137(b).

Finally, we note that section 552.228 of the Government Code requires a governmental body to provide a copy of the public information in the requested medium if it has the technological ability to do so without the purchase software or hardware. See Gov't Code § 552.228(b)(1), (2). Accordingly, if the commissioner's office has the technological capability to also provide the information at issue in the requested digital format, it must do so; if not, it may release the information in the submitted paper format or another medium acceptable to the requestor. See Gov't Code § 552.228(c).

In summary, the commissioner is not required to disclose the information you have marked in the submitted information. The commissioner must withhold the e-mail addresses we have marked under section 552.137 of the Government Code in the submitted information. 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

¹The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Pam Wissemann".

Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/dls

Ref: ID# 351320

Enc. Submitted documents

c: Requestor
(w/o enclosures)