



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 25, 2009

Mr. Leonard V. Schneider  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056-1918

OR2009-11967

Dear Mr. Schneider:

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# 358094.

The City of Magnolia (the "city"), which you represent, received a request for e-mails involving three named individuals and a specified time interval.<sup>1</sup> You state that some of the requested information either has been or will be released. You contend that the submitted information is not subject to disclosure under the Act. You also claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and have reviewed the information you submitted.<sup>2</sup>

We first note that some of the submitted information was created after the date of the city's receipt of this request for information. The Act does not require a governmental body to release information that did not exist when it received a request or create responsive

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<sup>1</sup>You inform us that the requestor subsequently narrowed the request to exclude attorney-client communications and authorized the city to redact certain types of information. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

information.<sup>3</sup> Thus, the submitted information that did not exist when the city received this request is not responsive to the request. This decision does not address the public availability of that information, which we have marked, and the city need not release that information in response to the request.

You contend that the responsive information is not subject to disclosure under the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) provides that "public information" consists of

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). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). You contend that the submitted e-mails are related to personal matters, rather than city business, and are not maintained under a law or ordinance or in connection with the transaction of official business. Based on your representations and our review of the information at issue, we agree that the submitted e-mails do not constitute public information for the purposes of section 552.002. We therefore conclude that the submitted information is not subject to disclosure under the Act and need not be released to the requestor.<sup>4</sup> *See* Open Records Decision No. 635 at 4 (1995) (Gov't Code § 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources).

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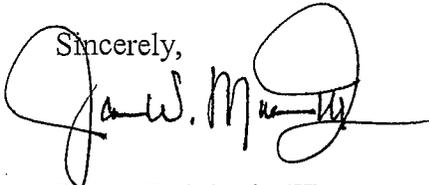
<sup>3</sup>*See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>4</sup>As we are able to make this determination, we need not address your other arguments against 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](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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/cc

Ref: ID# 358094

Enc: Submitted documents

c: Requestor  
(w/o enclosures)