



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 28, 2009

Ms. Sandra Balderrama  
Senior Advisor to the Executive Director  
Cancer Prevention and Research Institute of Texas  
P.O. Box 12097  
Austin, Texas 78711

OR2009-13615

Dear Ms. Balderrama:

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# 356617 (CPRIT No. 200901).

The Cancer Prevention and Research Institute of Texas (CPRIT), received a request for information relating to the position of CPRIT general counsel. You state you have released some of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address CPRIT'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 must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code 552.301(a), (b). Under 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) 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 id.* 552.301(e). In this instance, CPRIT received the request on June 29, 2009, but did not request a decision from our office or submit a copy of the information requested until

July 22, 2009. Consequently, we find that CPRIT failed to comply with the procedural requirements of section 552.301.

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 id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App. 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App. Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. *See* Open Records Decision Nos. 630 at 3 (1994), 150 (1977). As sections 552.117, 552.130, and 552.137 of the Government Code can provide compelling reasons that overcome the presumption of openness under section 552.302, we will consider your arguments under these exceptions for the submitted information.

Next, you inform us that CPRIT asked for clarification of some of the requested information. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You inform us that CPRIT has not received a response from the requestor. We note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561(1990). In this case, as you have submitted responsive information for our review and raised exceptions to disclosure for these documents, we consider CPRIT to have made a good faith effort to identify the information that is responsive to the request, and we will address the applicability of the claimed exceptions to the submitted information.

We note that the requestor specifically excluded from his request "information prohibited from disclosure under the [Act]." CPRIT need not release non responsive information in response to this request, and this ruling will not address that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W. 2d 266 (Tex. Civ. App. San Antonio 1978, writ dism'd). As we are able to make this determination, we need not address your arguments under sections 552.117 and 552.130 of the Government Code.<sup>1</sup>

Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b).

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<sup>1</sup>We have marked the types of information that fall under these exceptions.

The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. See Act of May 15, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Gen. Laws 651, 651-52, amended by Act of May 27, 2009, 81st Leg., R.S., ch. 962, § 7, 2009 Tex. Sess. Law Serv. 2555, 2557 (Vernon) (to be codified as an amendment to Gov't Code 552.137(c)). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. You have marked an email address maintained by a governmental entity under section 552.137. This email address, which we have marked for release, may not be withheld under section 552.137. However, CPRIT need not release the remaining e-mail addresses you have marked under section 552.137 as these addresses are confidential under the Act and therefore not responsive to this request.

In summary, non-responsive information need not be released to the requestor. The remaining responsive 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](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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/eb

Ref: ID# 356617

Enc. Submitted documents

c: Requestor  
(w/o enclosures)