



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2009

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2009-14450

Dear Mr. Bright:

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# 359912.

The Texas Alcoholic Beverage Commission (the "commission") received a request for three categories of information related to Ethics Opinion 587. You state that the commission has no information responsive to categories one and two of the request.¹ You claim that the submitted information is not public information subject to the Act. We have considered your arguments and the submitted information.

You assert that the submitted information is not subject to the Act. The Act is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act 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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

information or has a right of access to it.” *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body’s physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You contend that the submitted information consists of purely personal e-mails and was not collected, assembled, or maintained in connection with the transaction of commission business. *See* Open Records Decision No. 635 at 4 (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). However, you state that the e-mails relate to an invitation to speak at the Administrative Law Conference that was made to you in your capacity as the commission’s General Counsel. Thus, you maintain this information in connection with your duties as a commission employee. Accordingly, we find that the submitted information was created or maintained in connection with the transaction of official commission business and therefore constitutes “public information” as defined by section 552.002(a). Because the submitted information is subject to the Act, it must be released unless it falls within the scope of an exception to disclosure. *See* Gov’t Code §§ 552.301, .302.

We note that some of the submitted information is subject to section 552.137 of the Government Code.² 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), (b). The e-mail address at issue is not of a type specifically excluded by section 552.137(c). *See id.* § 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of the e-mail address at issue. Accordingly, the commission must withhold the marked e-mail address under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b). The remaining submitted information must be released to the requestor.

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

²The 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. 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 359912

Enc. Submitted documents

c: Requestor
(w/o enclosures)