



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2010.

Ms. Pamela Harrell Liston
The Liston Law Firm, P.C.
P.O. Box 1882
Rowlett, Texas 75030

OR2010-03140

Dear Ms. Liston:

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# 371560.

The Trophy Club Municipal Utility District No. 1 (the "district") received a request for specified e-mails and correspondence from or to named district officials, as well as audio and video recordings, and minutes of specified district meetings. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note that section 552.301(b) of the Government Code requires a governmental body that desires to withhold information under the Act to ask for the attorney general's decision and state the exceptions that apply no later than ten business days after the date of receiving the written request. You indicate the district received the instant request for information on December 3, 2009. The district sought clarification from the requestor as to

¹We assume that the "representative sample" of information submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the scope of the request, and the requestor responded on December 17, 2009.² *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). Accordingly, as we have no indication that the district acted in bad faith in seeking clarification in this case, we consider the district's ten day period for requesting a decision under section 552.301(b) to have commenced on December 17, 2009, the date of the district's receipt of the requestor's response to the request for clarification. *See City of Dallas v. Abbott*, No. 07-0931, 2010 WL 571972, at *3 (Tex. February 19, 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Accordingly, as the envelope containing your brief requesting a decision from this office is postmarked December 18, 2009, we consider the district's request to have been timely made.

Next, we address your assertion that the instant request for information is "an abuse of the Public Information Act" and would "cause undue burden and hardship" on district staff. We note that administrative inconvenience in responding to a request for information is not grounds for refusing to comply with a request under the Act. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). Moreover, a governmental body is required to make a good-faith effort to relate a request to responsive information that it holds or to which it has access. *See* Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). You indicate that a good-faith effort was made to relate the instant request to the information that you have submitted. Accordingly, we will address the public availability of the submitted information.

Next, we note portions of the submitted information, which we have marked, are non-responsive because they were created after the date the district received the present request for information. Our ruling does not address this non-responsive information, and the district need not release this information in response to the request.

We now address the applicability of your argument under section 552.103 of the Government Code to the responsive information. Section 552.103 provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

²You do not state, and we are unable to determine, the date on which the district sought clarification from the requestor.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the department received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The district must meet both prongs of this test for information to be excepted under section 552.103(a).

You state the responsive information relates to a pending lawsuit styled *Kathleen Wilson v. Gregory Lamont*, Cause No. 2009-60142-393. We note, however, the district is not a party to this litigation. See Gov't Code § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating that predecessor to section 552.103 only applies when governmental body is party to litigation). Since you have not demonstrated that the district has a litigation interest in this case, we conclude that the responsive information may not be withheld under section 552.103 of the Government Code.

We note section 552.137 of the Government Code is applicable to portions of the responsive information.³ Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purposes 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). Gov't Code § 552.137 (a)-(c). We have marked e-mail addresses that are not of a type specifically excluded by subsection (c). Accordingly, the district must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.⁴

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the district must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure. The remaining responsive 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 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 371560

Enc. Submitted documents

c: Requestor
(w/o enclosures)