



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2012

Mr. F.C. "Chris" Schneider
Associate General Counsel
Public Information Officer
Texas Department of Savings and Mortgage Lending
2601 North Lamar Suite 201
Austin, Texas 78705

OR2012-08422

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# 455773.

The Texas Department of Savings and Mortgage Lending (the "department") received a request for e-mail addresses for four specified license types. You state some of the requested information does not exist.¹ You claim the rest of the requested information is excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed the representative sample of information you submitted.²

¹We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. 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).

²This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department 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).

We first note the requestor only seeks access to the submitted e-mail address. Thus, the remaining submitted information regarding the owner of the e-mail address is not responsive to the present request for information. This decision does not address the public availability of information that is not responsive to the request, and the department need not release such information in response to the request.

Section 552.137 of the Government Code states "an email 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 email address has affirmatively consented to its public disclosure or the email address falls within the scope of section 552.137(c). Gov't Code § 552.137(a)-(c). You seek to withhold the submitted representative sample e-mail address under section 552.137(a). You state

[t]he [d]epartment obtains email addresses from license applicants for the purpose of communicating with the applicant during the licensing and renewal process. The e-mail addresses are used by the [d]epartment for the purpose of notifying applicants of problems with an application, or additional requirements to complete an application.

We note section 552.137(c) provides in part that section 552.137(a) does not apply to an email address

provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of [the Government Code], or receiving orders or decisions from a governmental body.

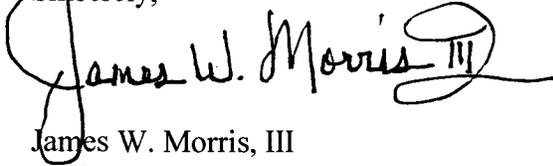
Id. § 552.137(c)(5). Section 2001.003(2) defines the word "license" as "includ[ing] the whole or part of a state agency permit, certificate, approval, registration, or similar form of permission required by law." *Id.* § 2001.003(2). Based on this definition and your representations, we find the email address at issue falls within the scope of section 552.137(c)(5). We therefore conclude the submitted e-mail address may not be withheld from disclosure under section 552.137 of the Government Code and 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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

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

JWM/bhf

Ref: ID# 455773

Enc: Submitted document

c: Requestor
(w/o enclosures)