



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2013

Ms. Kristen Pauling Doyle
CPRIT General Counsel
Cancer Prevention & Research Institute of Texas
P.O. Box 12097
Austin, Texas 78711

OR2013-06772

Dear Ms. Doyle:

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# 485255 (CPRIT PIA No. 2013-81).

The Cancer Prevention & Research Institute of Texas ("CPRIT") received a request for seven categories of information pertaining to gifts and grants received by CPRIT and certain communications. You state you have released some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of the CPRIT Foundation (the "foundation"). Accordingly, you state, and provide documentation showing, you notified the foundation of the request and of its right to submit arguments to this office as to why its submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have received comments from the foundation. We have considered the submitted arguments and reviewed the submitted information.

The foundation argues the submitted information is not subject to the Act. Section 552.021 of the Government Code provides for public access to "public information," *see* Gov't Code § 552.021, which is defined by section 552.002 of the Government Code as "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, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988).

The foundation contends the information at issue is not subject to the Act because the foundation is not a governmental body. We note, however, the information at issue consists of e-mails and attachments between CPRIT Oversight Committee members and board members of the foundation that were sent to CPRIT and are in the possession of CPRIT. CPRIT asserts it has possession of the correspondence at issue because CPRIT Oversight Committee members were asked to provide all responsive correspondence sent or received in their official capacities. Accordingly, we find this information was collected, assembled, or maintained in connection with the transaction CPRIT’s official business. Further, CPRIT has submitted this information as being subject to the Act. Therefore, we conclude the information at issue is subject to the Act and must be released, unless the foundation or CPRIT demonstrates the information falls within an exception to public disclosure under the Act. *See* Gov’t Code §§ 552.006, .021, .301, .302.

Next, we note the requestor is a Texas Senator. Section 552.008 of the Government Code grants access to requested information, including confidential information, to individual members, agencies, or committees of the Texas Legislature. Section 552.008 provides as follows:

(a) Th[e Act] does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is

confidential under law to sign a confidentiality agreement that covers the information and requires that:

- (1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;
- (2) the information be labeled as confidential;
- (3) the information be kept securely; or
- (4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

...

(c) This section does not affect:

- (1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;
- (2) the procedures under which the information is obtained under other law; or
- (3) the use that may be made of the information obtained under other law.

Id. § 552.008(a)-(b), (c). In this instance, the requestor is Texas Senator Wendy Davis. Senator Davis states her request was made for legislative purposes. Accordingly, CPRIT must make the submitted information available to her in accordance with section 552.008 of the Government Code.¹ *See id.* § 552.008(b). We note section 552.008 permits a governmental body to require a member of the legislature to sign a confidentiality agreement for the protection of information obtained pursuant to this section. *Id.* In addition, release of this information to Senator Davis under section 552.008 does not waive or affect the confidentiality of the information for the purposes of state or federal law or waive CPRIT's

¹As our ruling is dispositive, we need not address the foundation's remaining arguments against disclosure of this information.

right to assert exceptions to required public disclosure of this information to future requestors. *See id.*

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 485255

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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