



March 21, 2002

Mr. John Feldt
Assistant District Attorney
Denton County Criminal District Attorney's Office
P.O. Box 2850
Denton, Texas 76202

OR2002-1419

Dear Mr. Feldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160149.

The Denton County Criminal District Attorney's Office (the "district attorney") received a request for information relating to a county commissioner and members of her staff. The district attorney has released some of the requested information. The district attorney claims that the remaining requested information is excepted from disclosure under sections 552.101, 552.107, 552.131, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the information you submitted.²

We first must consider whether some of the submitted information is subject to chapter 552 of the Government Code. Chapter 552 is only applicable to public information. *See Gov't Code § 552.021.* Section 552.002 defines "public information" as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business[.]" *Id.* § 552.002(a). You state that some of the e-mail addresses in Exhibit D relate to the county commissioner's private communications on her home computer. You do not indicate that these communications are collected, assembled, or maintained under any law or ordinance. We find that these communications do not relate to the transaction of official business. Therefore, the e-mail addresses that relate to these

¹We note that the district attorney also initially raised sections 552.105, 552.109, and 552.111. You have not submitted arguments in support of these exceptions, however, and therefore we do not address them. *See Gov't Code § 552.301(e)(1)(A).*

²This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the district attorney to withhold any responsive information that is substantially different from the submitted information. *See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).*

communications do not constitute “public information.” Thus, these e-mail addresses, which we have marked, are not subject to disclosure under chapter 552. *Cf.* Open Records Decision No. 635 at 7 (1995) (statutory predecessor not applicable to personal calendar that public employee purchased and maintained and to which only she had access).

Next, we address the district attorney’s claim under section 552.107 of the Government Code with respect to Exhibits F, G, and H. Section 552.107(1) excepts from public disclosure

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct[.]

Gov’t Code § 552.107(1). Section 552.107(1) protects information that comes within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice and the client’s communications made in confidence to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information that may be withheld pursuant to the attorney-client privilege under section 552.107(1).

You assert that the documents submitted as Exhibits F, G, and H contain privileged attorney-client communications that are excepted from disclosure under section 552.107(1). You explain that the district attorney’s office serves as legal counsel to the Denton County Commissioners Court and to the county commissioners in their official capacities. You state that all of the attorneys involved in the submitted communications were employees of the district attorney’s office when these communications occurred. You inform us that the other parties to the communications in Exhibits F and G were officials or employees of Denton County when the communications occurred. You explain that the other parties to Exhibit H include a county commissioner, a county employee, representatives of entities that were under contract to provide services to the county, and employees of the Texas Department of Transportation. Based on your representations, we have marked information in Exhibits F and G that the county may withhold under section 552.107(1). You have not demonstrated, however, that all of the parties to the communications in Exhibit H are clients of the district attorney’s office. Therefore, the district attorney may not withhold Exhibit H under section 552.107(1).

You claim that Exhibit I contains information that section 552.131 of the Government Code excepts from disclosure. Section 552.131 provides as follows:

- (a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

(c) After an agreement is made with the business prospect, this section does not except from [required public disclosure] information about a financial or other incentive being offered to the business prospect:

(1) by the governmental body; or

(2) by another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by a governmental body or a reduction in revenue received by a governmental body from any source.

Gov't Code § 552.131. Section 552.131(a) protects only "trade secrets" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." To this extent, section 552.131 is co-extensive with section 552.110 of the Government Code, which excepts from disclosure "a trade secret obtained from a person" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" *See* Gov't Code § 552.110(a), (b); *see also* Open Records Decision Nos. 552 at 2-5 (1990) (trade secrets), 661 at 5-6 (1999) (commercial or financial information). Section 552.131(b) protects information about a financial or other incentive that is being offered to a business prospect by a governmental body or another person.

You state that Exhibit I relates to economic negotiations between Denton County and a business prospect that the county desires to have locate, stay, or expand within the county. However, you have not identified any information in Exhibit I that constitutes either a trade secret obtained from a business prospect or commercial or financial information, the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.131(a). Furthermore, you have not identified any information in Exhibit I that relates to any financial or other incentive that the

county or another person is offering to a business prospect. *See id.* § 552.131(b). Therefore, you have not demonstrated that any information contained in Exhibit I is excepted from disclosure under section 552.131.

You also raise section 552.137. This exception, which the Seventy-seventh Legislature added to chapter 552 of the Government Code, provides as follows:

(a) 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 this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. You assert that the highlighted e-mail addresses in Exhibits D and E are confidential under section 552.137. We agree that some of these e-mail addresses are confidential under section 552.137, unless the individual to whom a particular e-mail address belongs has affirmatively consented to its public disclosure. We note, however, that a number of the highlighted e-mail addresses in Exhibit E belong to business entities and public officials and employees. Section 552.137 is not applicable to these types of e-mail addresses. *See id.* § 552.137(a). We have marked the types of e-mail addresses that the district attorney may not withhold under section 552.137.

In summary, some of the e-mail addresses in Exhibit D are not subject to disclosure under chapter 552 of the Government Code. Some of the information in Exhibits F and G is excepted from disclosure under section 552.107(1). Some of the e-mail addresses in Exhibits D and E are confidential under section 552.137, unless the individual to whom the e-mail address belongs has affirmatively consented to its disclosure. The rest of the submitted information must be released. As sections 552.107 and 552.137 are dispositive, we need not address your privacy claim under section 552.101.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

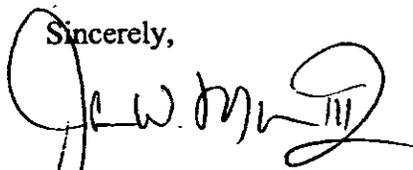
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is written in a cursive style with a large initial "J" and "M".

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

JWM/sdk

Ref: ID# 160149

Enc: Marked documents

c: Mr. Brooks Egerton
Mr. Reese Dunklin
The Dallas Morning News
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(w/o enclosures)