



July 9, 2002

Ms. Amanda Crawford  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

OR2002-3692

Dear Ms. Crawford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166178.

The Office of the Attorney General (the "OAG") received a request for the following information:

- 1) Political contributions by former Enron CEO Kenneth Lay and/or the Enron Corporation to any state officer and/or agent and or/official, [sic] including but not limited to Governor Rick Perry, Attorney General John Cornyn and Houston Mayor Lee P. Brown.
- 2) The appointment of former Enron executive Max Yzaguirre as Public Utilities Commission Chairman.
- 3) Political contributions by the Enron Corporation and/or CEO Kenneth Lay to the state senate campaign of John Cornyn.
- 4) Political contributions by the Enron Corporation and/or CEO Kenneth Lay to the campaigns of Texas state Supreme Court Justices Albert Gonzalez and/or Priscilla Owen.

- 5) Political contributions by the Enron Corporation and/or CEO Kenneth Lay to the US Senate Campaign of John Cornyn.
- 6) Political contributions by the Enron Corporation and/or CEO Kenneth Lay to First Assistant Attorney General, Howard Baldwin, and to Jeff Boyd, Deputy Attorney General for Litigation.
- 7) The Enron Corporation and/or CEO Kenneth Lay and First Assistant Attorney General, Howard Baldwin, and to Jeff Boyd, Deputy Attorney General for Litigation.
- 8) Political contributions by the Enron Corporation and/or CEO Kenneth Lay to the gubernatorial campaigns of George W. Bush in 1994 and.[sic] If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.
- 9) The Enron Political Action Committee.
- 10) A letter of support to former Houston City councilman Felix Fraga from Ken Lay when Fraga was being investigated by the FBI in 1997 for bribery.
- 11) Former Governor George W. Bush and Enron CEO Kenneth Lay.

You inform us that subsequently the requestor narrowed his request to include only the time period of January 1, 1995 to the present for all parts of the request, and, when the responsive information consists of "logs of any facsimile and phone conversations/messages," to include only those exchanged among "executive administration." You state that an estimated 37,000 pages of responsive information will be released to the requestor. You assert that the OAG holds no information responsive to the majority of the categories of the request. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we must address the OAG's obligations under section 552.301 of the Government Code. A governmental body wishing to withhold requested information must request an attorney general's decision no later than the tenth business day after the date of receiving the

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<sup>1</sup>We assume that the "representative sample" of records 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.

written request. Gov't Code § 552.301(b). In this case, the OAG failed to request a decision from this office within ten business days of receiving the first request. You explain, however, that because of the broad nature of the request, you sought clarification from the requestor on February 22, 2002. See Gov't Code § 552.222(b) (authorizing governmental body's request for clarification of records request). The ten-business-day deadline for requesting a decision from this office was tolled during the time that the OAG was awaiting a response to its clarification request. See Open Records Decision No. 663 at 5 (1999). The OAG received the requestor's clarification on May 10, 2002; consequently, the ten-business-day period resumed on May 10, 2002. Thus, the deadline for submitting a request for a decision from this office was May 20, 2002. You submitted your request for a decision on May 20th; accordingly, we conclude that you did timely request a decision from this office pursuant to section 552.301 of the Government Code.

You claim that section 552.103 excepts a portion of the information at issue from public disclosure. Section 552.103 provides as follows:

(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.

....

(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.

The governmental body 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, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas 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 OAG must meet both prongs of this test for information to be excepted under 552.103(a).

In this case, you inform us, and have provided documents showing, that litigation is pending in the United States Bankruptcy Court for the Southern District of New York, Case No. 01-16034 (AJG), *In Re: ENRON CORP., et al.* The State of Texas, represented by the OAG, is a party to that case. You further inform us that other litigation, related to the Enron

bankruptcy case, is pending in the 201<sup>st</sup> District Court of Travis County, Texas, Cause No. GV2-00906, *CITIES OF ABILENE, et al., v. PUBLIC UTILITY COMMISSION OF TEXAS*. Based upon our review of the submitted information, we find that the documents that you have marked are related to the pending litigation. We conclude, therefore, that the marked documents are excepted from public disclosure under section 552.103, and may be withheld by the OAG.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You also claim that a portion of the requested information is excepted from public disclosure under section 552.137 of the Government Code. This exception makes certain e-mail addresses confidential,<sup>2</sup> and provides in relevant part:

- (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 do not inform us that a member of the public has affirmatively consented to the release of his or her e-mail address. Therefore, the OAG must withhold such e-mail addresses under section 552.137.

In summary, the documents that you have marked are excepted from public disclosure under section 552.103, and may be withheld. 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 excepted from disclosure under section 552.137.

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<sup>2</sup>House Bill 2589, which also makes certain e-mail addresses confidential, took effect on September 1, 2001. See Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (codified at Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

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 cursive script, appearing to read "Cindy Nettles".

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 166178

Enc. Submitted documents

c: Mr. Christopher J. Farrell  
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(w/o enclosures)