



October 14, 2002

Mr. Alan P. Petrov  
Johnson Radcliffe Petrov & Bobbitt, P.L.L.C.  
1001 McKinney, Suite 1000  
Houston, Texas 77002-6424

OR2002-5793

Dear Mr. Petrov:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170618.

The Harris County Water Control and Improvement District No. 36 (the "district"), which you represent, received a request for copies of a specified form, sign-in sheets, and minutes of executive sessions for specified periods of time. You state that you have provided the requestor with some responsive information. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that a portion of Exhibit B is excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(1)*. However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the official or employee did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Although you have submitted a copy of a form to us

for review that you contend reflects that the official at issue elected confidentiality for his home address in accordance with section 552.024, we are uncertain based on our review of this form whether the official requested confidentiality for his home address prior to the district's receipt of the request for information. Accordingly, we conclude that the district must withhold from disclosure the information that we have marked pursuant to section 552.117(1) of the Government Code, if the official to whom this information pertains requested confidentiality for this information in accordance with section 552.024 prior to the district's receipt of the present request. However, if the official did not request confidentiality for this information in accordance with section 552.024 until after the district received the request, we conclude that the district must release this particular information to the requestor.

You also claim that the information that is responsive to the portion of the request pertaining to the minutes of certain executive sessions of the district is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.<sup>1</sup> Section 551.104(c) provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). We note that section 551.146 penalizes the unlawful disclosure of a certified agenda or tape recording of a lawfully closed meeting as a Class B misdemeanor and makes the person responsible for disclosure liable for damages to a person injured or damaged by the disclosure. *See* Gov't Code § 551.146. We also note that such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). Furthermore, the attorney general lacks the authority to review such information to determine whether a governmental body may withhold such information from disclosure under the statutory predecessor to section 552.101 of the Government Code. *See id.* Therefore, the Open Meetings Act prohibits the submission of such information to this office for review. We understand that the information at issue relates to closed executive session meetings of the district and presume that no court order has been issued with respect to the public inspection and copying of such information. Accordingly, we conclude that the district must withhold this particular requested information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

In summary, the district must withhold from disclosure the information that we have marked pursuant to section 552.117(1) of the Government Code, if the official to whom this information pertains requested confidentiality for this information in accordance with section 552.024 prior to the district's receipt of the request for information. The district must withhold from disclosure the information that is responsive to the portion of the request pertaining to the minutes of certain executive sessions of the district pursuant to

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<sup>1</sup> Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information protected from disclosure by other statutes.

section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

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).

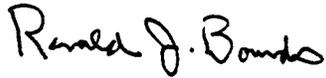
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 170618

Enc. Marked documents

cc: Mr. Eric Hamic  
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(w/o enclosures)