



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

August 4, 2003

Mr. Chris Kloeris
Executive Director
Texas Optometry Board
333 Guadalupe Street, Suite 2-420
Austin, Texas 78701-8500

OR2003-5393

Dear Mr. Kloeris:

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# 185394.

The Texas Optometry Board (the "Board") received a request for "all current, non-exempt and non-confidential e-mail addresses held electronically by the [Board] in digital format including but not limited to 'licensees' and 'employees[.]'" (Emphasis in original). In response to your letter notifying the requestor of your decision to seek an attorney general opinion regarding the releasability of the requested information, the requestor clarified his request to include "all e[-]mail addresses for employees, business contacts and licensees, not individual employees' personal e[-]mail addresses." You assert the requested information is excepted from disclosure under sections 552.117 and 552.137 of the Government Code. We reviewed the representative sample of information you submitted and considered the exceptions you claim.¹

Initially, we note that because the requestor does not seek Board employees' personal e-mail addresses, we need not address your arguments for this information.

¹ We assume 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 those records contain substantially different types of information than that submitted to this office.

With respect to the remaining e-mail addresses, we address your claim under section 552.137 of the Government Code. This provision states the following:

- (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. This provision requires the Board to withhold an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body, unless the member of the public has affirmatively consented to its release. *See* Gov't Code § 552.137. You explain that no member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the Board must withhold the e-mail addresses of the members of the public, which you have marked, under section 552.137 of the Government Code. We note that as section 552.137 does not apply to a general business e-mail address or to a government employee's work e-mail address, the Board must release these e-mail addresses, which you have marked, to the requestor.

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 Dep't of Pub. 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 185394

Enc: Submitted documents

c: Mr. Brad L. Armstrong
Attorney at Law
206 Westwood Terrace
Austin, Texas 78746
(w/o enclosures)