



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 3, 2004

Ms. Victoria J.L. Hsu, P.E.  
Executive Director  
Texas Board of Professional Engineers  
1917 IH-35 South  
Austin, Texas 78741

OR2004-4550

Dear Ms. Hsu:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202763.

The Texas Board of Professional Engineers (the "board") received a request for the complete board files regarding three named professional engineers licensed by the board. You advise that you are withholding the social security numbers of the engineers at issue pursuant to a previous determination issued to the board by this office in Open Records Letter No. 2001-4612 (2001). *See* Gov't Code § 552.301(a) (allowing a governmental body to withhold information that is subject to a previous determination). You indicate that the board will release some responsive information to the requestor. You claim, however, that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, you seek to withhold e-mail addresses of members of the public contained in the documents submitted as Exhibit 4 pursuant to section 552.137 of the Government Code. In Open Records Letter No. 2003-3624 (2003), this office issued a previous determination authorizing the board to withhold non-governmental e-mail addresses of members of the public pursuant to section 552.137 without the necessity of requesting a decision from the attorney general, provided the relevant individuals have not consented to the release of the e-mail addresses. We presume that the facts and circumstances at issue continue to support the findings set forth in Open Records Letter No. 2003-3624. We therefore determine that the board may withhold the submitted e-mail addresses pursuant to section 552.137 in accordance with the previous determination of this office in Open Records Letter No. 2003-3624.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information protected by other statutes. You contend that some of the submitted information is excepted from disclosure under the Engineering Practice Act, chapter 1001 of the Occupations Code. Section 1001.212 of the Occupations Code provides:

(a) A statement made by a person providing a reference for an applicant and other pertinent information compiled by or submitted to the Board relating to an applicant for licensure under this Act is privileged and confidential.

(b) Information described in Subsection (a) may be used only by the board or its employees or agents who are directly involved in the application or licensure process. The information is not subject to discovery, subpoena, or other disclosure.

Occ. Code § 1001.212. You contend that the highlighted information in Exhibit 1 and the reference documents submitted as Exhibits 2 and 3 consist of information compiled by the board relating to applicants for licensure. Thus, you claim this information is excepted from disclosure under section 552.101 in conjunction with section 1001.212. Based on your representations and our review of the submitted information, we agree that the highlighted information in Exhibit 1, as well as the information in Exhibits 2 and 3 is excepted under section 552.101 in conjunction with section 1001.212 of the Occupations Code. Accordingly, we conclude that the board must withhold this information pursuant to section 552.101 of the Government Code as information made confidential by law. The remainder of the information at issue must be released 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/krl

Ref: ID# 202763

Enc: Submitted documents

c: Mr. James B. Ragan, P.C.  
723 Coleman Avenue  
Corpus Christi, Texas 78401  
(w/o enclosures)