ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 28, 2004

Mr. George A. Staples
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2004-6335

Dear Mr. Staples:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206066.

The City of North Richland Hills (the "city"), which you represent, received a request for the e-mails received by JoAnn Johnson for a certain period of time. You state that most of the requested information will be released. You claim, however, that the e-mail addresses of members of the public are excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

Section 552.137 of the Government Code excepts from disclosure certain e-mail addresses. The exception 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.
>
> (c) Subsection (a) does not apply to an e-mail address:

> (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
>
> (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
>
> (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
>
> (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(a). You state that the individuals to whom the e-mail addresses belong have not affirmatively consented to their release. Based on this representation, we agree that the e-mail addresses we have marked must be withheld from disclosure under section 552.137. We note section 552.137 does not apply to a government employee's work e-mail address or a business' general e-mail address or web address.

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,

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 206066

Enc: Submitted documents

c: Mr. Ron C. West
6304 Glenview Drive
North Richland Hills, Texas 76180
(w/o enclosures)