



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 3, 2004

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

OR2004-7545

Dear Ms. Hsu:

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# 208451.

The Texas Board of Professional Engineers (the "board") received a request for information related to the requestor's "application to take the Principles & Practices exam[,] " including meeting minutes, notes, recordings, and correspondence. The requestor subsequently amended the request to exclude e-mail addresses, but requested "the contents of those e-mails [and] a list of from whom the e-mails were sent." The board states that it does not have minutes, recordings, or telephone logs that are responsive to this request.<sup>1</sup> You indicate that some responsive information has been released to the requestor. We understand you to claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the Engineering Practice Act, chapter 1001 of the Occupations Code. We have considered the claimed exception and reviewed the submitted information.

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

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 Exhibits 3, 4, 6, 7, and 10, as well as the reference documents submitted as Exhibits 5, 8, and 9 consist of information compiled by the board relating to an applicant 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 information at issue 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 submitted information 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 208451  
Enc. Submitted documents

c: Mr. Robert A. Cummings  
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(w/o enclosures)