



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 30, 2004

Ms. Pamela Smith  
Senior Assistant General Counsel  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2004-10965

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 214959.

The Texas Department of Public Safety (the "department") received a request for the names, telephone numbers, and e-mail addresses of all individuals and entities who have purchased credits from the department since October 1, 2003. You inform us that the department is releasing all responsive information other than e-mail addresses. You claim that the responsive e-mail addresses are excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.<sup>1</sup> We also have considered the comments that we received from an attorney for the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.137 is applicable to certain types of e-mail addresses. Section 552.137(a) provides as follows:

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

(a) Except as otherwise provided by this section, 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.

Gov't Code § 552.137(a). However, certain types of e-mail addresses are specifically excluded from the scope of section 552.137(a). Section 552.137(c) states that

[s]ubsection (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.

*Id.* § 552.137(c); *see also* Act of May 30, 78<sup>th</sup> Leg., R.S., ch. 1089, § 1, Tex. Gen. Laws 3124 (amending Gov't Code § 552.137).

You inform us that the information at issue consists of e-mail addresses of persons that have purchased criminal conviction records through the department's internet website. You contend that such e-mail addresses are not subject to section 552.137(c)(1). The requestor's attorney contends, however, that such e-mail addresses fall within the scope of section 552.137(c)(1). Thus, we must determine whether section 552.137(c)(1) is applicable to the information that the department seeks to withhold. In this regard, we note that the goal of statutory construction is to give effect to the intent of the legislature. *See Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex. 1994). Unless a statute is ambiguous, legislative intent is discerned from the language of the statute itself. *See Continental Cas. Co. v. Downs*, 81 S.W.3d 803, 805 (Tex. 2002). Effect must be given to every word and phrase of the statute, if it is reasonable to do so. *See Gov't Code* § 311.021; *Abrams v. Jones*, 35 S.W.3d 620, 625 (Tex. 2000). The words used in a statute are accepted according to their ordinary meaning,

unless given a specific statutory definition, and the language of a statute will not be given an exaggerated, forced, or constrained meaning. *See* Gov't Code § 311.011; *Cities of Austin et al. v. Southwestern Bell Tel. Co.*, 92 S.W.3d 434, 442 (Tex. 2002).

In this instance, the legislature has excluded from the scope of section 552.137(a) an e-mail address that is “provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent[.]” Gov't Code § 552.137(c)(1). The requestor argues that a person who purchases information from the department enters into a contract with the department and establishes a contractual relationship between the purchaser of information and the department, so that the purchaser's e-mail address falls within the scope of section 552.137(c)(1). We note, however, that, the legislature is presumed to have used every word of a statute for a purpose. *See Cities of Austin et al. v. Southwestern Bell Tel. Co.*, 92 S.W.3d at 442. Thus, the language of section 552.137(c)(1) on which the requestor relies – “provided to a governmental body by a person who has a contractual relationship with the governmental body” – must be read and understood in conjunction with the remaining language of section 552.137(c)(1) – “or by the contractor's agent.” *Id.* § 552.137(c)(1). *See City of West Lake Hills v. Westwood Legal Defense Fund*, 598 S.W.2d 681, 684 (Tex. Civ. App.—Waco 1980, n.w.h.) (one provision of statute will not be given meaning out of harmony or inconsistent with other provisions, even though it might be susceptible to such construction if standing alone). In providing that section 552.137(c)(1) also encompasses the e-mail address of “the contractor's agent,” we believe that the legislature restricted the scope of the phrase “contractual relationship” to a contractual relationship between a governmental body and a “contractor.” In other words, the “person who has a contractual relationship with a governmental body” in the first part of section 552.137(c)(1) is the “contractor” to which the latter part of section 552.137(c)(1) pertains. *See Gulf Ins. Co. v. James*, 185 S.W.2d 966, 969 (Tex. 1945) (where words of general import are followed immediately by words of restricted import, general language will be limited by restricted language); *see also City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 30 (Tex. 2003) (meaning of particular words in statute may be ascertained by reference to other words associated with them in same statute).

The word “contractor” is commonly understood to mean a person “who, for a fixed price, undertakes to procure the performance of works or services on a large scale, or the furnishing of goods in large quantities, whether for the public or a company or individual.” Black's Law Dictionary 295 (5<sup>th</sup> ed. 1979); *see also Clark v. Lynch*, 139 S.W.2d 294, 295 (Tex. Civ. App.—Fort Worth 1940, n.w.h.) (contractor is one who renders service in course of independent occupation). Black's further states that “[a] contractor is a person who, in the pursuit of any independent business, *undertakes to do a specific piece of work for other persons*, using his own means and methods without submitting himself to their control in respect to all the details, and who renders service in the course of an independent occupation representing the will of his employer only as to the result of his work and not as to the means by which it is accomplished. (Emphasis added). Thus, we believe that section 552.137(c)(1) is intended to apply only to the e-mail address of a “contractor” – *i.e.*, a person, or the agent

of a person, who has a contractual relationship with a governmental body to provide goods or services to the governmental body. *See also* Labor Code § 406.121(1) ("General contractor" means person who undertakes to procure performance of work or service, either separately or through the use of subcontractors). This interpretation is consistent with the legislative history of section 552.137(c)(1). *See* Hearing on H.B. 2032 before House Comm. on State Affairs, 78<sup>th</sup> Leg., R.S. (April 7, 2003); Hearing on H.B. 2032 Before Senate Comm. on State Affairs, 78<sup>th</sup> Leg., R.S., May 1, 2003.

In this instance, the e-mail addresses at issue were furnished to the department by persons who *purchased information* from the department, rather than by persons who contracted with the department to provide goods or services. We therefore conclude that section 552.137(c)(1) is not applicable to these particular e-mail addresses.

We note, however, that section 552.137(a) does not apply to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The department may not withhold those types of information, which we have marked, under section 552.137. Likewise, some of the information that the department seeks to withhold does not consist of e-mail addresses. The department may not withhold that information, which we also have marked, under section 552.137. With the exception of the marked information, we conclude that the information at issue must be withheld from the requestor under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure.

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

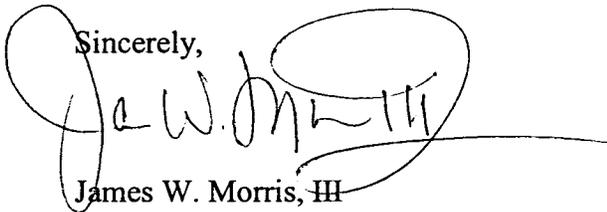
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 214959

Enc: Submitted documents

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