ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2005

Mr. Dick Gregg, Jr.
Gregg & Gregg
16055 Space Center Blvd., Ste. 150
Houston, Texas 77062

OR2005-06753

Dear Mr. Gregg:

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# 228985.

The City of Kemah (the "city"), which you represent, received a request for all correspondence between the city mayor and a named person or regarding certain specified issues. You state that you have released some of the requested information, but claim that the remaining requested information does not constitute "public information" for purposes of the Act. We have considered your arguments and reviewed the submitted information.

You claim that correspondence maintained by the mayor on his private business or personal e-mail accounts is not public information subject to the Act. Section 552.002 of the Government Code defines "public information" as:

> information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, under this provision, information is generally "public information" within the scope of the Act when it relates to the official business of a governmental body. We find that the submitted documents and e-mails are addressed to members of the public or city officials and discuss official city business concerning the requested specified issues. Further, the mayor signs the documents and e-mails in his official capacity. Accordingly, we conclude that the submitted information is subject to disclosure under the Act. *See* Gov't Code § 552.002(a); *see also* Open Records Decision No. 425

(1985) (concluding, among other things, that information sent to individual school trustees' homes was public information because it related to official business of governmental body) (overruled on other grounds by Open Records Decision Nos. 439 (1986)); Open Records Letter Nos. 2005-01126 at 3 (2005) (stating that information in a public officeholder's personal e-mail account may be subject to the Act where the officeholder uses the personal e-mail account to conduct public business); 2003-1890 (2003) (finding that personal cellular, personal office, and home telephone records, as well as the e-mail correspondence from personal e-mail accounts of the mayor and the commissioners that relate to the transaction of official city business is subject to disclosure under the Act); and 2003-0951 (2003) (finding that e-mails relating to district business to be public information).

We note that the submitted information contains the e-mail addresses of members of the public. Section 552.137 of the Government Code excepts from disclosure "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 consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We have marked the e-mail addresses of members of the public. These e-mail addresses are not the type specifically excluded by section 552.137(c). Therefore, unless the individuals whose e-mail addresses are at issue consented to release of the e-mail addresses, the city must withhold them accordance with section 552.137 of the Government Code.

In summary, with the exception of the marked e-mail addresses that must be withheld under section 552.137 of the Government Code, the submitted information must be released.

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, upon receiving this ruling, the governmental body

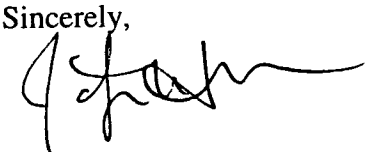
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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); *Tex. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 228985

Enc. Submitted documents

c: Bernard McIntyre
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Clear Lake Shores, Texas 77565
(w/o enclosures)