



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2005

Ms. Sarah Irving Swanson
Assistant Director of General Law
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711

OR2005-10227

Dear Ms. Swanson:

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# 236154.

The Public Utility Commission (the "commission") received a request for four categories of information pertaining to a specified docket number. You assert that the commission does not have documents responsive to two of the requested categories of information.¹ You also state that some of the requested information is being released to the requestor, but claim that some of the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.111, and 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note that section 552.228 of the Government Code requires a governmental body to provide a requestor with a "suitable copy" of requested public information. Although you inform us that some of the requested documents "are accessible on the internet using our Filings Interchange," we note that "[a] public information officer does not fulfill his or her duty under the Public Information Act by simply referring a requestor to a governmental body's website for requested public information." Open Records Decision No. 682 at 7 (2005). Instead, section 552.221 of the Government Code requires a governmental body "to either provide the information for inspection or duplication in its offices or to send copies of the information by first class United States mail." *Id.*; see Gov't Code § 552.221. Thus, the commission must provide access or copies of the information at

¹We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.-San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

issue to the requestor; however, we note that a requestor may agree to accept information on a governmental body's website in fulfillment of a request for information under the Act. Open Records Decision No. 682 at 7.

You assert that some the submitted information is excepted under section 552.103 of the Government Code, which provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated when the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). This office considers a contested case under the Texas Administrative Procedure Act ("APA"), Government Code chapter 2001, to constitute "litigation" for purposes of section 552.103. Open Records Decision No. 588 (1991) (discussing previous version of section 552.103).

The submitted information pertains to an application by the Sam Houston Electric Cooperative, Inc. for a Certificate of Convenience and Necessity in PUC Docket No. 29705. You inform us that the commission referred the application proceeding to the State Office of Administrative Hearings (the "SOAH") as a contested case proceeding, and that the

SOAH administrative law judge issued a proposal for a decision regarding this application, which was agreed to and signed by the commission. You also indicate that this proceeding is governed by the APA and that, subsequent to the commission's receipt of the request for information, the requestor filed a motion for a rehearing pursuant to section 2001.146 of the APA. Based on these representations, we therefore agree that litigation was pending when the commission received the request for information. Furthermore, having reviewed your arguments and representations, we find that the information you have marked under section 552.103 is related to the pending proceedings. Accordingly, the commission may withhold the information marked pursuant to section 552.103.²

We note, however, that once the information has been obtained by all parties to the pending litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 at 2 (1982). We also note that the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

You assert that some of the remaining information is excepted under section 552.137 of the Government Code. Section 552.137 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). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the commission must withhold the e-mail addresses you have marked, as well as those addresses we have marked, under section 552.137.

To conclude, the commission may withhold the information marked under section 552.103, and it must withhold the marked e-mail addresses under section 552.137. It must release the remaining information at issue.

²As we are able to determine this under section 552.103, we do not address your other arguments for exception of this information.

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).

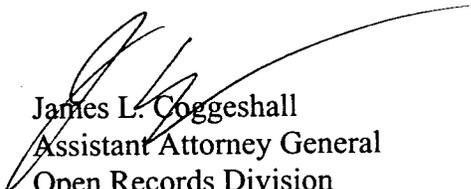
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General at (512) 475-2497.

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If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jpa

Ref: ID# 236154

Enc. Submitted documents

c: Bishop George H. Russell
The Universal Ethician Church
1401 19th Street
Huntsville, Texas 77340
(w/o enclosures)