



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2006

Mr. Matthew C.G. Boyle
Boyle & Lowry, L.L.P.
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2006-03805

Dear Mr. Boyle:

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# 246490.

The Upper Trinity Regional Water District (the "district"), which you represent, received a request for twelve categories of information, including "the CH2MHill Master Plan Report" and plans and technical specifications for the Southwest Pipeline and another line in Highland Village.¹ You state that some responsive information has been made available to the requestor. You claim that the information responsive to categories one and two of the request is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.² We have also considered comments submitted on behalf of the requestor. *See Gov't Code § 552.304* (providing that any person may submit comments stating why information should or should not be released).

¹The district sought and received a clarification of the information requested. *See Gov't Code § 552.222* (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note that the purpose of the Act is to prescribe conditions under which members of the general public can obtain information from a governmental body. See Attorney General Opinion JM-119 (1983) (statutory predecessor). An official of a governmental body who, in an official capacity, requests information held by the governmental body does not act as a member of the public in doing so. Thus, exceptions to public disclosure under the Act do not control the right of access of an official of a governmental body to information maintained by the governmental body. See *id.* at 3 (member of community college district board of trustees, acting in official capacity, has an inherent right of access to information maintained by district); see also Gov't Code §§ 552.201 (chief administrative officer of governmental body is officer for public information for governmental body), .204 (officer for public information is responsible for release of public information as required by Act).

In this instance, the requestor is seeking information in his capacity as a member of the district's board of directors. In Attorney General Opinion JM-119 (1983), this office addressed a similar situation where a member of the board of trustees of the Alamo Community College District ("ACC") requested access to certain records held by ACC. This office concluded that:

. . . when a trustee of a community college district, acting in his official capacity, requests information maintained by the district, he is not a member of the 'public' for purposes of the Open Records Act. On the contrary, he is a member of the board which at least constructively maintains all records in the district's possession Because such a trustee is not merely a member of the public, his request for records in the district's possession cannot, in our opinion, be treated as a request for information under the . . . Act.

Attorney General Opinion JM-119 at 2 (1983) (emphasis in original), *reaffirmed in* Attorney General Opinion JC-0120 (1999). Attorney General Opinion JM-119 further concludes that although the Act governs the release of information to members of the general public,

. . . [i]t cannot, in our view, control the right of access of a member of a governmental body to information in that governmental body's possession. Since the governmental body – in this instance the board of trustees of the district – at least constructively maintains records in the district's possession, we believe it logically follows that a member of that board has an inherent right of access to such records, *at least when he requests them in his official capacity.*

Id. at 3 (emphasis added). Consequently, whether the requestor in this instance has a right of access to the requested information depends on whether he is seeking the information in his official capacity. From the clear and precise wording of his request for the information at issue "as a member of the District's Board of Directors," we conclude that he is seeking the information in his official capacity. Accordingly, to the extent the requestor has

requested records of the district, he has an inherent right of access to the information and it must be provided to him.³ The release of this information in this specific instance does not constitute a release to the general public and, as such, the district waives none of the possible exceptions to the disclosure of this information. *See* Open Records Decision No. 666 at 4 (2000) (municipality's disclosure to a municipally-appointed citizen advisory board does not constitute a release to the public as contemplated under section 552.007 of the Government Code). Because the release of this information to a member of the district's board of directors is not a release to the public, the requestor must be cautious in maintaining the documents in the same manner as they are maintained by the district.⁴ *See generally* Gov't Code § 552.352 (criminal penalties imposed for release of confidential information). Accordingly, we do not address whether or not the requestor is entitled to copies of the information at issue in his official capacity.

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).

³We note that, in a letter to this office dated March 6, 2006, the district states that the requestor "has been provided full access to review the requested material . . . consistent with the treatment of all other Board members regarding this type of information."

⁴As our ruling is dispositive, we need not address the district's arguments against disclosure. Furthermore, we do not rule on the requestor's right to access or copies under the Act.

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.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/er

Ref: ID# 246490

Enc. Submitted documents

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