



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2007

Mr. Charles S. Stone
Executive Director
Office of Rural Community Affairs
P.O. Box 12877
Austin, Texas 78711

OR2007-04123

Dear Mr. Stone:

In a letter dated December 22, 2006, the Office of Rural Community Affairs (“ORCA”) asked this office to rule on whether certain information was subject to required public disclosure under the Public Information Act (the “Act”), chapter 552 of the Government Code. ORCA’s request was assigned ID# 272838. On March 7, 2007, this office issued a letter stating that file #272838, pertaining to a request to ORCA from TXU Energy (“TXU”), must be closed because the requested information was at issue in pending federal litigation between TXU and Neighbors for Neighbors, Inc. (“NFN”): *Neighbors for Neighbors, Inc. v. Alcoa, Inc.*, No. A-01-CA-881-SS (W.D. Tex.).

Subsequent to our March 7, 2007 letter, however, TXU informed us that, in an order dated January 17, 2007, the judge in the pending federal litigation declined to rule on whether the requested emails must be released. The order specifically states the following: “The court reserves judgment on the issue of attorney-client privilege with regard to [the ORCA employee]’s emails, as the parties represent [that] the Texas Attorney General is presently considering the issue.” In its brief to this office on February 7, 2007, TXU did not provide us with a copy of the judge’s order or otherwise inform us of its content. Further, we were not informed of the existence of the order by counsel to NFN, who also submitted briefing to this office. Nevertheless, based on this newly presented information, we hereby withdraw the decision to close file #272838 and will rule on whether the requested information must be released under the Act. *See* Gov’t Code §§ 552.301, 552.306.

ORCA received a request for four categories of information, including ORCA manuals and emails sent to or by a named ORCA employee that contain the phrase Neighbors for Neighbors or TXU. ORCA does not object to the release of the requested information, and

we assume that the requested manuals have been released to the requestor. However, NFN, in correspondence with this office, asserts that the requested communications are either not subject to the Act or are excepted from disclosure under sections 552.101, 552.102, 552.107, and 552.111 of the Government Code.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have also received comments from the requestor. *See id.* We have considered the submitted arguments and reviewed the submitted representative sample of information.²

We initially note that the Act only applies to public information. *See* Gov't Code §§ 552.021, 552.221. Section 552.002(a) of the Act defines "public information" as information "collected, assembled, or maintained under a law or ordinance or in connection with 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 or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of an individual.

The information at issue consists of electronic files and email communications of the named employee that pertain to an environmental lawsuit filed by NFN and two other environmental organizations, Environmental Defense and Public Citizen, against Alcoa and TXU. This information includes email communications between the ORCA employee, who is president of NFN, and other members of NFN. NFN argues that the communications at issue are not public information for purposes of the Act because they were not collected, assembled, or maintained under a law or ordinance or in connection with transaction of official ORCA business. TXU, on the other hand, asserts that the information at issue constitutes public information because it is "maintained by a state employee utilizing his state-issued email address, are stored on state-owned property, and are owned by the governmental body, which also has a right of access to it." We note that ORCA has not responded to these arguments.

The determination of whether information is subject to the Act is case specific. After review of the submitted arguments and the information at issue, we find that the submitted information consists entirely of personal information that is unrelated to the transaction of official ORCA business. Accordingly, we conclude that the submitted information does not constitute public information for purposes of section 552.002(a), and ORCA is not required

¹Although NFN asserts that the requested information is also excepted under section 552.022 of the Government Code, we note that this provision does not constitute an exception to disclosure under the Act. Rather, it provides a list of the types of information that are considered expressly public, and that generally may only be withheld if they are expressly confidential under "other law." Gov't Code § 552.022(a).

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.

to release it to the requestor pursuant to the Act. *See* Open Records Decision No. 635 at 4 (1995) (statutory predecessor to section 552.002 was not applicable to personal information unrelated to official business and created or maintained by a state employee involving de minimis use of state resources). As our ruling is dispositive, we do not address the other arguments for exception of the submitted 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).

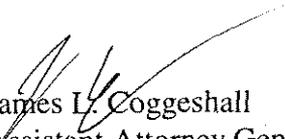
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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.

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/jb

Ref: ID# 272838

Enc. Submitted documents

c: Ms. Janet Atwood
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(w/o enclosures)