



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2007

Mr. David Kemp
Assistant County Attorney
Civil Division
Potter County
500 South Fillmore Street, Room 303
Amarillo, Texas 79101

OR2007-12887

Dear Mr. Kemp:

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# 290637.

The Potter County Clerk (the "county") received a request for the name, company name, address, e-mail address, home phone number, and work phone number of all registered users of a specified website for the past five years. You indicate that the requested information is not public information subject to disclosure under the Act. You also claim that the requested information is excepted from disclosure under sections 552.110 and 552.137 of the Government Code, but make no arguments and take no position with respect to the applicability of these exceptions. Instead, you state that the request may involve a third party interest and provide documentation showing, that you notified Affiliated Government Solutions ("ACS") of the request for information and of its right to submit arguments explaining why the information concerning it should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered your arguments. We have also received and considered the requestor's written comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

The Act applies only to "public information." *See* Gov't Code § 552.021. 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.

Id. § 552.002. Information is generally subject to chapter 552 when it is held by a governmental body and it relates to the official business of a governmental body, or is used by a public official or employee in the performance of official duties. Open Records Decision No. 635 (1995). The Act also is applicable to information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see also* Open Records Decision No. 462 at 4 (1987). A governmental body must make a good-faith effort to relate a request for information to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). However, a governmental body need not answer factual questions, conduct legal research, release information that did not exist when it received the request, or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990). Likewise, a governmental body is not required to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that received the request for it. *See* Open Records Decision Nos. 534 at 2-3 (1989), 518 at 2-3 (1989).

In this instance, you inform us that the requested information is created and maintained by ACS. You state that none of the information requested is information that would be kept as a record of the county or used by the county in the performance of official government business. Furthermore, the county is not provided the requested information, nor is it capable of generating the requested information. You indicate that the county does not have a right of access to the requested information. *See id.* Therefore, as the county neither has possession of or access to the requested information, we conclude that the requested information is not public information under the Act and it need not be released to the requestor.

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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 290637

Enc. Submitted documents

c: Ms. Brittany Henderson
c/o Mr. David Kemp
Assistant County Attorney
Civil Division
Potter County
500 South Fillmore Street, Room 303
Amarillo, Texas 79101
(w/o enclosures)