



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2008

Ms. Chelsea Thornton
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2008-04489

Dear Ms. Thornton:

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# 305030.

The Office of the Governor (the "governor") received five requests for e-mails sent or received by the governor during specified time periods, and for the e-mail headers on e-mails sent or received by the governor during specified time periods. You state that some responsive information has been released, but claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.106, 552.107, 552.111, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted on behalf of one of the requestors and by the Texas Department of Public Safety (the "department"). See Gov't Code §§ 552.304 (providing that interested party may submit comments stating why information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor

¹We 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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).

Initially, we note that some of the information at issue consists of a password. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. *See* ORD 581 at 6 (construing predecessor statute). Based on the reasoning in that decision and our review of the information at issue, we determine that the password you have marked in Exhibit H does not constitute public information under section 552.002. *See* Gov't Code § 552.002(a) (defining 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"). Accordingly, the marked password is not subject to the Act and need not be released in response to the request.²

You inform this office that some of the submitted information in Exhibit F was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-01132 (2008). It does not appear that the law, facts, and circumstances on which the prior ruling was based have changed. Therefore, the governor may continue to rely on that ruling as a previous determination and withhold or release the information at issue in accordance with Open Records Letter No. 2008-01132. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

The requestor asserts that the governor did not comply with section 552.301 of the Government Code in requesting a ruling from this office. Pursuant to section 552.301 of the Government Code, a governmental body has certain procedural obligations when it receives a written request for information that it wishes to withhold. Under section 552.301(b), a governmental body that wishes to withhold information from public disclosure must request a ruling from this office not later than the tenth business day after the date of receiving the written request. *Id.* § 552.301(b). Under section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental

²As we reach this conclusion, we do not address your argument regarding disclosure of this information.

body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D).

You state that the governor received the first request for information on November 6, 2007. The governor requested a ruling from this office on November 19, 2007, the ninth business day following receipt of the request for information. You explain that pursuant to section 552.2615, on November 20, 2007, the governor provided the requestor with an estimate of charges for responding to the request, and pursuant to section 552.263 also required a deposit or bond.³ In this instance the itemized statement provided to the requestor by the governor complied with the provisions of section 552.2615. Therefore, the governor's deadlines under section 552.301 were tolled under section 552.263, and the request for information was deemed to have been received by the governor on January 16, 2008, the date you indicate that the requestor's deposit was received. *See id.* § 552.263(e) (providing that for purposes of subchapters F and G of Act, request for copy of public information is considered to have been received by governmental body on date governmental body receives deposit or bond for payment of anticipated costs). The governor's statutory deadlines under sections 552.301(b) and 552.301(e) were January 31, 2008 and February 7, 2008, respectively. As noted above, the governor's request for a ruling was received timely on November 19, 2007, and the governor submitted the information required under section 552.301(e) on January 24 and 25, 2008, well within the fifteen-business-day deadline. Accordingly, we conclude that the governor complied with section 552.301 in requesting this ruling. Therefore, we will address your arguments.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information that other statutes make confidential. Section 490.057 of the Government Code relates to confidentiality of certain information pertaining to the Emerging Technology Fund (the "fund"). Section 490.057 provides as follows:

³Section 552.263(a) provides in relevant part that a governmental body "may require a deposit or bond for payment of anticipated costs . . . if [the governmental body] has provided the requestor with the required written itemized statement detailing the estimated charge for providing the copy and if the charge" is estimated to exceed \$100, if the governmental body has more than 15 full-time employees, or \$50, if the governmental body has fewer than 16 full-time employees. *Id.* § 552.263(a). The requirements of the written itemized statement referred to in section 552.263 are found in section 552.2165 of the Government Code. *See id.* § 552.2615. The requestor objects to the itemized statement because it has the effect of allowing the governmental body to include in the statement charges for redacting information prior to a ruling on claimed exceptions from the Attorney General. We note, however, that the Legislature has determined that the itemized statement a governmental body must provide under section 552.2615 is a written itemized statement "that details *all estimated* charges that will be imposed[.]" *Id.* § 552.2615(a) (emphasis added).

Information collected by the governor's office, the [Texas Emerging Technology Advisory C]ommittee, or the committee's advisory panels concerning the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity being considered for an award from the fund is confidential unless the individual or entity consents to disclosure of the information.

Id. § 490.057. You indicate that the documents in Exhibit J concern the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity being considered for an award from the fund. You state that none of the individuals or entities being considered for an award from the fund have consented to disclosure of the information at issue. Based upon these representations and our review, we find that Exhibit J concerns the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity being considered for an award from the fund. Therefore, this information is confidential under section 490.057 of the Government Code and must be withheld from public disclosure under section 552.101 of the Government Code.⁴

You claim that the e-mails in Exhibit I are excepted from public disclosure under section 552.104 of the Government Code. Section 552.104 excepts from public disclosure "information that, if released, would give advantage to a competitor or bidder." Govt. Code § 552.104(a). The protections afforded by section 552.104 serve two purposes. One purpose is to protect the interests of a governmental body by preventing one competitor or bidder from gaining an unfair advantage over others in the context of a pending competitive bidding process. *See* Open Records Decision No. 541 (1990). The other purpose is to protect the legitimate marketplace interests of a governmental body when acting as a competitor in the marketplace. *See* Open Records Decision No. 593 (1991). In both cases, the governmental body must demonstrate the existence of actual or potential harm to its interests in a particular competitive situation. *See id.* at 2; *see also* Open Records Decision Nos. 463 (1987), 453 at 3 (1986). A general allegation of a remote possibility of harm is not sufficient to invoke section 552.104. *See* ORD 593 at 2.

Having considered the governor's arguments and reviewed the submitted information, we find that the governor has sufficiently demonstrated that section 552.104 is applicable in this instance. Therefore, the governor may withhold the submitted information in Exhibit I pursuant to section 552.104 of the Government Code.

⁴As section 552.101 is dispositive, we do not address your remaining claims for this information.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege.⁵ When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives.⁶ TEX. R. EVID. 503(b)(1)(A)-(E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

⁵Although you also assert the attorney-client privilege under section 552.101 in conjunction with Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

⁶Specifically, the privilege applies only to confidential communications between the client or a representative of the client and the client’s lawyer or a representative of the lawyer; between the lawyer and the lawyer’s representative; by the client or a representative of the client, or the client’s lawyer or a representative of the lawyer, to a lawyer or representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein; between representatives of the client or between the client and a representative of the client; or among lawyers and their representatives representing the same client. *See* TEX. R. EVID. 503(b)(1)(A)-(E); *see also id.* 503(a)(2), (a)(4) (defining “representative of the client,” “representative of the lawyer”).

You state that Exhibit E and the remaining information in Exhibit F consist of confidential communications between parties who share a privity of interest concerning legal matters affecting the state.⁷ You have identified those parties. Further, you assert that these communications were made for the purpose of facilitating the rendition of legal services. You further explain that these documents were not intended to be disclosed to third persons other than those to whom disclosure was made in furtherance of the rendition of legal services. Based on your representations and our review of the submitted documents, we find that the information we have marked in Exhibit E and the remaining information in Exhibit F consist of privileged attorney-client communications that the governor may withhold under section 552.107 of the Government Code. However, you have failed to demonstrate how the remaining information in Exhibit E consists of communications between privileged parties made for the purpose of facilitating the rendition of professional legal services to the client. Therefore, the governor may not withhold the remaining information in Exhibit E under section 552.107.

Section 552.106(b) excepts from disclosure “[a]n internal bill analysis or working paper prepared by the governor’s office for the purpose of evaluating proposed legislation.” Gov’t Code § 552.106(b). Section 552.106(b) encourages frank discussion on policy matters; however, this section applies to information created or used by employees of the governor for the purpose of evaluating proposed legislation. Furthermore, section 552.106(b) only protects policy judgments, advice, opinions, and recommendations involved in the preparation or evaluation of proposed legislation; it does not except purely factual information from public disclosure. *See* House Committee on State Affairs, Public Hearing, 5/6/97, H.B. 3157, 75th Leg. (1997) (stating that protection given to legislative documents under section 552.106(a) comparable with protection given to governor’s legislative documents under section 552.106(b)); *see also* Open Records Decision No. 460 at 2 (1987).

You inform us that the document you have submitted as Exhibit G is an “internal working [document] relating to legislation.” You further state that the advice, opinions, and recommendations contained within this document determine the policy position taken by the governor regarding this bill throughout its legislative process. Accordingly, you assert that the document submitted as Exhibit G should be withheld in its entirety under section 552.106(b). Upon review, we find that the information at issue consists of a bill analysis memorandum, which contains recommendations and factual information. Accordingly, the governor may withhold the recommendations regarding the bill that we have marked within the submitted memorandum pursuant to section 552.106. The remaining information in Exhibit G must be released to the requestor.

⁷*See* Tex. R. Evid. 503(a)(2) (defining “representative of the client” as person having authority to obtain legal services or to act on legal advice on behalf of client, or person who for purpose of effectuating legal representation makes or receives a confidential communication while acting in scope of employment for client).

You assert that the information in Exhibits B, C, and D is excepted under section 552.111 of the Government Code, which excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD 615 at 5. But, if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

This office has also concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You state that Exhibits B and D consist of communications between members of the governor's staff regarding policy issues, and that Exhibit C consists of draft documents and

discussions of draft documents. Upon review, we determine that the governor may withhold the information we have marked under section 552.111 because it consists of advice, opinions, and recommendations relating to policymaking. However, no part of the remaining information may be withheld on this basis because it is factual information.

You further raise section 552.131 of the Government Code. Section 552.131 relates to economic development information and provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131. Section 552.131(a) excepts from disclosure only "trade secret[s] of [a] business prospect" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." *Id.* This aspect of section 552.131 is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b). Because you have not demonstrated that the information at issue qualifies as a trade secret for purposes of section 552.110(a) of the Government Code, nor made the specific factual or evidentiary showing required under section 552.110(b) that the release of the information at issue would result in substantial competitive harm, we conclude that none of the information at issue may be withheld pursuant to section 552.131(a). You claim that Exhibit I consists of information concerning possible financial or other incentives being offered to a business prospect. We find you have not sufficiently demonstrated how the information at issue consists of a financial or other incentive for purposes of section 552.131(b). Therefore, we conclude that this information is not excepted from disclosure under section 552.131(b).

We note that portions of the remaining information are subject to 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. *See id.* § 552.137(a)-(c). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an Internet website address, an institutional e-mail address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked the e-mail addresses that are subject to section 552.137 of the Government Code. 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 governor must withhold the e-mail addresses we have marked under section 552.137 of the Government Code.

We next address the department’s assertions under section 552.108 of the Government Code, which excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (Gov’t Code § 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws).

The statutory predecessor to section 552.108(b)(1) protected information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed use of force guidelines), 456 (1987) (information relating to location of off-duty police officers), 413 (1984) (sketch showing security measures to be used at next execution), 409 (1984) (information regarding certain crimes protected if it exhibits pattern that reveals investigative techniques), 341 (1982) (information whose disclosure would hamper efforts to detect forgeries of drivers’ licenses), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). The statutory predecessor to section 552.108(b)(1) was not applicable to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (Penal Code provisions, common-law rules, and constitutional limitations on use of force not protected), 252 at 3 (1980) (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known). Based on our review of the arguments and remaining submitted information, we find that release of the information we have marked would interfere with law enforcement or crime prevention. Thus, the governor may withhold the information we marked under section 552.108(b)(1). However, the department has failed to explain in any detail how release of the remaining information would interfere with law enforcement or crime

prevention. Accordingly, the remaining submitted information is not excepted from public disclosure under section 552.108(b)(1) of the Government Code.

Section 552.101 also encompasses sections 418.176 and 418.177 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Section 418.176 provides in part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;

(2) relates to a tactical plan of the provider; or

(3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). Section 418.177 provides as follows:

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, to an act of terrorism or related criminal activity.

Id. § 418.177. The fact that information may be related to a governmental body's emergency response preparedness or security concerns does not make such information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code

§ 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

Upon review of the department's arguments and the information at issue, we find that the department has failed to demonstrate that any of the remaining information was collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity, or that it relates to a tactical plan of the provider. Therefore, the governor may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. Further, we find that the department has failed to demonstrate that the remaining information is related to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. *See id.* § 418.177. We conclude, therefore, that the governor may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

The department seeks to withhold the telephone numbers to the governor's protective detail (the "GPD") command post under section 552.101 in conjunction with common-law privacy.⁸ Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that information may be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.*

The department asserts that the telephone numbers at issue must be withheld because the privacy rights of the governor include the right to be safe from physical harm. The department states that it is responsible for the governor's personal safety, as well as the personal safety of his family. The department claims that the release of these numbers "would impair the GPD's ability to communicate concerning matters critical to the safety of the [g]overnor." The department asserts that "[t]here does not appear to be any significant public interest at stake; certainly not one sufficiently important to overcome an individual right to personal safety." In this situation, we believe that the department has shown that release of the telephone numbers of the GPD command post would compromise the security provided for the governor and, therefore, subject the governor to an imminent threat of physical danger. Accordingly, the governor must withhold the marked telephone numbers

⁸Section 552.101 also encompasses the common-law right to privacy.

under section 552.101 of the Government Code in conjunction with the “special circumstances” aspect of common-law privacy.

In summary, the marked password in Exhibit H is not subject to the Act and need not be released in response to the request. The governor may continue to rely on Open Records Letter No. 2008-01132 as a previous determination and withhold or release the marked information in Exhibit F in accordance with our prior ruling. Exhibit J is confidential under section 490.057 of the Government Code and must be withheld from public disclosure under section 552.101 of the Government Code. The governor must withhold (1) the e-mail addresses we have marked under section 552.137 of the Government Code, and (2) the marked telephone numbers under section 552.101 of the Government Code in conjunction with the “special circumstances” aspect of common-law privacy. The governor may withhold the information (1) in Exhibit I pursuant to section 552.104 of the Government Code, and (2) that we have marked under sections 552.106, 552.107, 552.108(b)(1), and 552.111 of the Government Code. The remaining information must 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

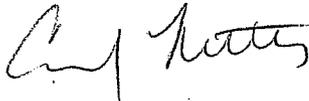
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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/mcf

Ref: ID# 305030

Enc. Submitted documents

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