



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2008

Ms. Sara Shiplet Waitt  
Senior Associate Commissioner  
Legal Services Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2008-05639

Dear Ms. Waitt:

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# 308874.

The Texas Department of Insurance ("TDI") received a request for all documents that were the basis for the decision in Commissioner's Bulletin B-0004-08 Rebating. You state that TDI has released some of the requested information to the requestor. You claim that a portion of the submitted e-mail is excepted from disclosure under section 552.137 of the Government Code. In addition, you state that the release of the submitted e-mail may implicate the proprietary interests of Al Thurmond Agency, Inc. (the "agency"). Accordingly, you have notified the agency of the request and of its right to submit arguments to this office as to why the submitted e-mail should not be released. *See* Gov't Code § 552.305(d) (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 section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exception you claim and reviewed the submitted e-mail.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why

information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the agency explaining why the submitted e-mail should not be released. Therefore, we have no basis to conclude that the agency has protected proprietary interests in the e-mail. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Therefore, the submitted e-mail may not be withheld on that basis.

Next, we address your argument that the e-mail address you have marked is confidential under section 552.137 of the Government Code. Section 552.137 of the Government Code provides in part:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

Gov't Code § 552.137(a)-(c). Section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception.

You state that the e-mail address contained in the submitted e-mail is not specifically excluded by section 552.137(c)(4). Additionally, it does not appear that the e-mail address is excluded by any of the other provisions of section 552.137(c). You state the owner of the e-mail address did not consent to release of his e-mail address. Therefore, we agree that the e-mail address that you have marked, and the identical e-mail address we have marked, fall within the scope of section 552.137(a). Therefore, TDI must withhold the marked e-mail addresses under section 552.137 of the Government Code. The remaining information must be released.

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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 308874

Enc. Submitted documents

c: Mr. Bill Mann  
Integrating Human Resource Solutions  
P.O. Box 691967  
Houston, Texas 77269-1967  
(w/o enclosures)

Mr. Mark Thurmond  
Al Thurmond Agency, Inc.  
14800 St. Mary's Lane, Suite 235  
Houston, Texas 77079  
(w/o enclosures)