



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2008

Ms. Rebecca Brewer
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2008-08671

Dear Ms. Brewer:

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# 314096.

The City of Frisco (the "city"), which you represent, received a request for correspondence between two named city employees and the Texas Board of Professional Engineers (the "board") pertaining to the requestor. You state that you will release a portion of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the requestor excludes from his request "documents authored by [the requestor], unless annotated by other and/or included as part of a larger document." Therefore, any such information is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the city need not release nonresponsive information to the requestor.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that is made confidential by statute. You contend that the submitted information is excepted from disclosure under the Engineering Practice Act, chapter 1001 of the Occupations Code. Section 1001.212 of the Occupations Code provides:

(a) A statement made by a person providing a reference for an applicant and other pertinent information compiled by or submitted to the board relating to an applicant for licensure under this Act is privileged and confidential.

(b) Information described in Subsection (a) may be used only by the board or its employees or agents who are directly involved in the application or licensure process. The information is not subject to discovery, subpoena, or other disclosure.

Occ. Code § 1001.212. You have provided affidavits from employees in the city's Engineering Services Department explaining that the submitted information, which generally consists of the requestor's resume, reference statements and related documents, handwritten notes, and e-mails, is documentation provided to the board relating to an applicant for licensure. Therefore, based on your representations, the affidavits, and our review, we conclude that a portion of the information, which we have marked, is confidential pursuant to section 1001.212 of the Occupations Code and must be withheld under section 552.101 of the Government Code. However, we find that remaining information you seek to withhold under section 1001.212 consists of information compiled by a city employee in the course of daily business and does not reflect that it was submitted to or compiled by the board. Therefore, we find that you have failed to demonstrate the applicability of section 1001.212 to the remaining responsive information. Accordingly, you may not withhold this information under section 552.101 of the Government Code on the basis of section 1001.212 of the Occupations Code and it 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). If the governmental body does not file suit over 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,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 314096

Enc. Submitted documents

c: Mr. Matt Richardson
3448 Belladonna Drive
Plano, Texas 75093
(w/o enclosures)