



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2008

Mr. A. Duane Waddill
Executive Director
Texas Residential Construction Commission
P.O. Box 13144
Austin, Texas 78711

OR2008-09190

Dear Mr. Waddill:

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# 315115.

The Texas Residential Construction Commission (the "commission") received a request for several categories of information pertaining to a named individual and his company. You state that you have released some of the requested information to the requestor. You make no arguments and take no position regarding whether the submitted information is excepted from disclosure. You, instead, indicate that the submitted information may be subject to privacy interests. Accordingly, you state, and provide documentation showing, that you notified the individual whose privacy interests are at issue of the request and of his right to submit arguments to this office as to why the information should not be released. *See generally* Gov't Code §§ 552.304 (providing that interested party may submit comments stating why information should or should not be released), 552.305(d). We note that the individual has not submitted any comments regarding why the submitted information should not be released.¹ Thus, we have no basis to conclude that the release of any portion of the submitted information would implicate the privacy interests of this individual.

¹You have forwarded to this office correspondence that the commission received from the individual at issue requesting that the submitted information remain confidential. We note that information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976).

We note that the submitted information contains an e-mail address that is excepted from disclosure under section 552.137 of the Government Code.² This section 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 or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address we have marked does not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that the commission has received consent for the release of the e-mail address at issue. Therefore, the commission must withhold the marked e-mail address under section 552.137 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). 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

²Unlike other exceptions to disclosure under the Act, this office will raise section 552.137 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, 352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

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# 315115

Enc. Submitted documents

c: Mr. Jacob D. Thomas
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(w/o enclosures)