



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2008

Mr. Scott Rhodes
Winstead
401 Congress Avenue, Suite 2100
Austin, Texas 78701

OR2008-09875

Dear Mr. Rhodes:

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# 316418.

The Fern Bluff Municipal Utility District (the "district"), which you represent, received a request for all the district's Board of Directors (the "board") meeting packets as well as approved minutes for board meetings over a specified time period. You state that the district is releasing some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the submitted information includes resolutions and orders adopted by the district. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). The submitted resolutions are analogous to ordinances and as such must be released. The submitted orders appear to have been adopted at public meetings of the district and thus are official records of a governmental body's public proceedings. As such, these orders also

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.

must be released. *See* Open Records Decision No. 221 at 1 (1979) (“official records of the public proceedings of a governmental body are among the most open of records”).

Next, we note that the submitted documents include agendas of public meetings of the district’s board. The agendas and minutes of a governmental body’s public meetings are specifically made public under the Open Meetings Act, chapter 551 of the Government Code. *See* Gov’t Code § 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying upon request). Accordingly, the submitted agendas of public meetings must be released in accordance with the Open Meetings Act.

We also note that some the submitted information is subject to sections 552.022(a)(1) and 552.022(a)(5) of the Government Code, which provide that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate[.]

Gov’t Code § 552.022(a)(1), (5). Portions of the submitted information are subject to sections 552.022(a)(1) and 552.022(a)(5). You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. However, this section is a discretionary exception under the Act and does not constitute “other law” for purposes of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the district may not withhold the information subject to section 552.022 under section 552.103 of the Government Code. However, a portion of this information is subject to sections 552.136 and 552.137 of the Government Code.² These sections do constitute “other law” for purposes of section 552.022. Therefore, we will

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

address the applicability of sections 552.136 and 552.137 to the information that is subject to section 552.022.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Accordingly, we find that the district must withhold the account numbers we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code, which requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that the owners of the e-mail addresses at issue affirmatively consented to their release. Therefore, the district must withhold the e-mail addresses we have marked under section 552.137.

We now address your argument under section 552.103 of the Government Code for the information which is not subject to section 552.022. Section 552.103 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov’t Code § 552.103(a), (c). The governmental body has the burden of providing relevant facts and documents sufficient to establish the applicability of section 552.103 to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate: (1) that litigation was pending or reasonably anticipated on the date of its receipt of the request for information and (2) that the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.—Houston [1st Dist.] 1984, writ ref’d n.r.e.); *see also* Open Records Decision

No. 551 at 4 (1990). Both elements of the test must be met in order for information to be excepted from disclosure under section 552.103. *Id.*

You inform us that, prior to the district's receipt of this request for information, a lawsuit styled *Fern Bluff Municipal Utility District v. Jean I. Cochran and the City of Round Rock, Texas* was filed. Based on this representation and our review of the submitted documents, we agree that litigation was pending when the district received the request. Furthermore, having reviewed your arguments and representations, we find that the remaining submitted information is related to the pending proceedings for purposes of section 552.103. Therefore, the district may withhold the information we have marked pursuant to section 552.103 of the Government Code.

We note, however, that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). We also note that section 552.103 is no longer applicable to this information once the related litigation concludes. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

In summary, the district must withhold the information we have marked under sections 552.136 and 552.137 of the Government Code. The district may withhold the information we have marked under section 552.103 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). 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 316418

Enc. Submitted documents

c: Ms. Jean I. Cochran
c/o Scott Rhodes
Winstead
401 Congress Avenue, Suite 2100
Austin, Texas 78701
(w/o enclosures)