



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 21, 2008

Ms. Cathleen Parsley  
General Counsel  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, Texas 78711-3025

OR2008-11565

Dear Ms. Parsley:

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# 319658.

The State Office of Administrative Hearings ("SOAH") received a request for "a copy of the SOAH's Desktop Reference Binder applicable to Lemon Law cases[.]" You have interpreted the request to ask for a copy of the bench book SOAH has compiled to assist its Administrative Law Judges ("ALJs") in hearing consumer affairs cases referred to SOAH from the Motor Vehicle Division of the Texas Department of Transportation (the "department"). You state that you will release some of the requested information, consisting of copies of applicable statutes and rules, sample proposals for decision and interim orders issued by the ALJs, some information from the department's website about lemon law cases, and processing instructions for SOAH's administrative assistants. You claim that the submitted information is excepted from disclosure under section 552.144 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>We 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.

You claim that the submitted information is excepted from disclosure under section 552.144(1) of the Government Code, which provides:

The following working papers and electronic communications of an administrative law judge at the State Office of Administrative Hearings are excepted from [required public disclosure]:

(1) notes and electronic communications recording the observations, thoughts, questions, deliberations, or impressions of an administrative law judge[.]

*Id.* § 552.144(1). You contend that the submitted information consists of the types of notes and electronic observations “contemplated by [section] 552.144(1).” You separate the submitted information into two categories. First, you explain that “the work papers and hearings overview were developed by ALJs for their own use to assist them as they preside, and as they deliberate on and resolve issues, in lemon law cases.” We note that the “work papers” consist of blank case outline and calculation sheets. We also note that the hearings overview outlines the basic procedure of a hearing, and has a table of relevant rules and statutory provisions attached to it. Second, you explain that “the memorandum contains research on a particular question asked by the ALJs about the cases, and the sample [e-mail] exchange reflects a conversation among ALJs on a pertinent lemon law subject.” You state that the submitted information is “integral to the ALJs’ ability to preside and do their jobs effectively in lemon law cases.” Upon review, we conclude that SOAH may withhold the memorandum and e-mail exchange, which we have marked, under section 552.144(1) of the Government Code. However, we determine that SOAH has failed to demonstrate the applicability of section 552.144(1) of the Government Code to the work papers and hearings overview. As you raise no other exceptions to disclosure, 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,



Bill Dobie  
Assistant Attorney General  
Open Records Division

WJD/jh

Ref: ID# 319658

Enc. Submitted documents

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(w/o enclosures)