



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2008

Ms. YuShan Chang  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2008-17224

Dear Ms. Chang:

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# 330376.

The Houston Department of Health and Human Services (the "department") received a request for information pertaining to the board members of specified organizations. You state that you will release most of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. You also state that release of the submitted information may implicate the privacy interests of board members of the Greater Houston YWCA ("YWCA"). You state, and provide documentation showing, that you have notified YWCA of the request and of its opportunity to submit comments to this office as to why its information should not be released to the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered your arguments and reviewed the submitted information.

Initially, you acknowledge, and we agree, that the department failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379,

381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, you assert that third party interests are possibly at stake, and you raise section 552.137 of the Government Code, which can provide a compelling reason to withhold information. We will therefore consider any comments received from YWCA, as well as your argument under section 552.137.

Section 552.137 states that “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 [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov’t Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). You state that the e-mail addresses you have marked are not the types specifically excluded by section 552.137(c) and that their owners have not consented to their release. Upon review, we agree that most of the e-mail addresses you have marked are subject to section 552.137. However, you have also marked a web address that does not constitute an e-mail address subject to section 552.137. Therefore, except for the web address, which we have marked for release, the department must withhold the e-mail addresses you have marked under section 552.137. Because we did not receive comments from YWCA, and no other exceptions have been raised, 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 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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 330376

Enc. Submitted documents

c: Requestor  
(w/o enclosures)