



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 10, 2009

Ms. Pamela Harrell Liston  
The Liston Law Firm, P.C.  
P.O. Box 1882  
Rowlett, Texas 75030

OR2009-09522

Dear Ms. Liston:

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# 348622 (RM#26).

The Trophy Club Municipal Utility District No. 2 (the "district"), which you represent, received a request for all e-mails between the requestor and another named individual over a specified time period. You claim the submitted information is not subject to the Act. You also argue the submitted information need not be released to this requestor. We have considered your arguments and reviewed the submitted information.

We understand you to argue that the present request for information is too broad and that complying with this request would be burdensome. However, we note that a governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with Act does not determine availability of information). The fact that it may be burdensome to provide the information at issue does not relieve a governmental body of its responsibility to comply with the Act. *Id.*; Open Records Decision No. 497 (1988). Therefore, the district may not decline to comply with the requirements of the Act on the basis of administrative inconvenience.

You appear to argue the submitted information is not subject to the Act. The Act is only applicable to "public information." *See Gov't Code* § 552.021. Section 552.002(a) defines public information as "information that is collected, assembled, or maintained under a law

or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. *See* Open Records Decision No. 462 (1987). Although you acknowledge that you represent the district, we understand you to argue that the Act does not apply to "records kept on behalf of [the district] by its private attorney . . . when the records sought are not legal product prepared by the attorney[.]" Upon review of the submitted information, we determine that the e-mail communications at issue were communicated between the requestor, in her capacity as the district's officer for public information, and you, in your capacity as the attorney representing the district. Therefore, we find that the communications pertain to the transaction of official district business. Further, you acknowledge that as the attorney representing the district, you maintain the submitted e-mail communications on behalf of the district. This office has previously held that a client generally has a right of access to documents collected by its attorney if the documents relate to the client's official business. *Open Records Decision No. 499 (1988)*. Therefore, because the submitted e-mail communications constitute official district business, we determine that the district has a right of access to the communications, which are maintained by you as a third party for the district. Consequently, the submitted information constitutes "public information" as defined by section 552.002(a) and is subject to the Act.

Next, you assert the request is improper because the requestor is an employee of the district. The identity of the requestor is generally not a factor to be considered when a governmental body receives a request for information. *See* Gov't Code § 552.223 (requiring uniform treatment of all requests for information). Further, this office has determined the Act does not permit the consideration by a governmental body or this office of a requestor's intended use of information when responding to open records requests. *See* Gov't Code § 552.222(a) (stating governmental body may not inquire into purpose for which information will be used); *see also* *Open Records Decision Nos. 508 (1988) at 2* (motives of a person seeking information under the Act are irrelevant), *51 (1974)*. Therefore, the district may only withhold the submitted information if it is excepted from disclosure under the Act or made confidential by law.

We note the submitted information contains e-mail addresses that are subject to section 552.137 of the Government Code.<sup>1</sup> 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],"

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* *Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 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). We have marked the e-mail addresses that the district must withhold under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consented to their disclosure. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 348622

Enc. Submitted documents

c: Requestor  
(w/o enclosures)