



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2009

Ms. Laura Pfefferle
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2009-13247

Dear Ms. Pfefferle:

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# 355728 (DSHS File O15663-2009).

The Texas Department of State Health Services (the "department") received a request for a specified Asbestos Hazard Emergency Response Act ("AHERA") report. You claim portions of the submitted information are excepted from disclosure under sections 552.108 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted a copy of a previous request for information. However, the copy of the previous request is not responsive to the present request. This decision does not address the public availability of this non-responsive information, and this information need not be released in response to this request.

Next, we address your representation that the responsive information was released in response to a previous request for information. We note the Act does not permit the selective disclosure of information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision

¹Although you also raise section 552.101 of the Government Code, you have provided no arguments in support of withholding any portion of the submitted information under this exception. Therefore, we do not address the applicability of section 552.101 to the submitted information. *See* Gov't Code §§ 552.301, .302.

No. 463 at 1-2 (1987). Information that has been voluntarily released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *but see* Open Records Decision Nos. 579 (1990) (exchange of information among litigants in "informal" discovery is not "voluntary" release of information for purposes of statutory predecessor to section 552.007), 454 at 2 (1986) (governmental body that disclosed information because it reasonably concluded that it had constitutional obligation to do so could still invoke statutory predecessor to section 552.108). You seek to withhold portions of the responsive information under section 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Therefore, no portion of the responsive information may be withheld from the present requestor under section 552.108. However, you also claim a portion of the responsive information is confidential under section 552.137 of the Government Code. This exception makes information confidential by law. Because section 552.007 does not apply to information made confidential by law, we will now address your argument under section 552.137 for the information at issue.

Section 552.137 of the Government Code 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 the department has not received consent to release the e-mail address you have marked. Accordingly, the department must withhold the marked e-mail address under section 552.137 of the Government Code, provided this e-mail address is not a type specifically excluded by section 552.137(c) of the Government Code.

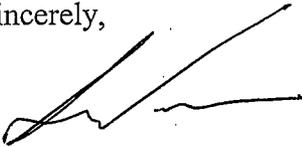
In summary, the department must withhold the e-mail address you have marked in the responsive information pursuant to section 552.137 of the Government Code. The remaining responsive information must be released to the requestor.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 355728

Enc. Submitted documents

c: Requestor
(w/o enclosures)