



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2009

Mr. Reg Hargrove  
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OR2009-13450

Dear Mr. Hargrove:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 354624.

The Office of the Attorney General (the "OAG") received a request from Representative Lon Burnam for filings and communications from January 1, 2008 to June 17, 2009 between the OAG and the Texas Commission on Environmental Quality (the "TCEQ") and between the OAG and Waste Control Specialists ("WCS") related to WCS or its low-level radioactive waste disposal facilities in Andrews County. Representative Burnam states and the OAG acknowledges the request is made for legislative purposes. Thus, the OAG states it has released most of the information pursuant to section 552.008 of the Government Code. However, because the TCEQ objects to release of the remaining information the OAG maintains as the TCEQ's legal counsel, the OAG submits this request for a decision to allow the TCEQ to submit its arguments as to why the information is excepted from disclosure. The TCEQ asserts the information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the TCEQ's arguments and have reviewed the submitted information.

Section 552.008 of the Government Code grants access to information, including confidential information, requested by individual members, agencies, or committees of the Texas Legislature for legislative purposes, and provides as follows:

(a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting individual member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under [the Act] for legislative purposes. . . .

Gov't Code § 552.008(a), (b). Disclosure of information to a legislator does not waive or affect the confidentiality of the information or the right to assert exceptions in the future regarding that information. *Id.* § 552.008(b).

In this instance, the requestor is Representative Burnam, who is a member of the State Legislature, and he states he is requesting the information for a legislative purpose as required by section 552.008. However, the TCEQ contends release of the information pursuant to section 552.008 violates the separation of powers doctrine, and intrusion into the attorney-client relationship "would have a chilling effect on both the lawyer and the client." The powers of Texas government are divided into three distinct departments, and one department shall not exercise any powers assigned to either of the others unless expressly permitted to do so. Tex. Const. art. II, § 1. A violation of the separation of powers occurs when one branch of government unduly interferes or threatens to unduly interfere with another branch's effective exercise of its constitutionally assigned powers. *Armadillo Bail Bonds v. State*, 802 S.W.2d 237, 239 (Tex. Crim. App. 1990).

Upon review of the TCEQ's arguments, we find section 552.008 expressly requires a governmental body to release information to a member of the legislature to use for legislative purposes. Section 552.008 states the Act "does not grant authority to withhold information from individual members," and "[a] governmental body on request by an individual member . . . of the legislature *shall* provide public information." Gov't Code § 552.008(a), (b) (emphasis added). Thus, we are bound by the plain language of section 552.008 and are compelled to conclude the OAG must provide the information to Representative Burnam in accordance with section 552.008. We note section 552.008 permits a governmental body to require a member of the legislature to sign a confidentiality agreement for the protection of information obtained pursuant to this section. *Id.* § 552.008(b). Because we make our determination under section 552.008, we do not address the applicability of the exceptions the TCEQ raised to withhold the information.

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

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 354624

Enc: Submitted documents

c: Requestor  
(w/o enclosures)

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