



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2010.

Ms. Jacqueline Hojem
Public Information Officer and Senior Paralegal
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208

OR2010-07126

Dear Ms. Hojem:

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# 379836 (MTA Nos. 2010-0360 & 2010-0371).

The Metropolitan Transit Authority of Harris County (the "authority") received two requests for all e-mail correspondence to and from two named authority employees since January 1, 2010, all e-mail correspondence between a named authority employee and the Office of the General Counsel since January 1, 2010, all authority contracts with a named individual, and e-mails sent between a named authority employee and two other named individuals on two specific dates. You state the authority does not have any information responsive to the part of the requests seeking e-mail correspondence between the named authority employee and the Office of the General Counsel.¹ You also state the authority will release portions of the other requested information, as well as the requested contracts in their entirety. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

All of the submitted information was the subject of a previous request for information received by the authority, in response to which this office issued Open Records Letter No. 2010-06854 (2010). In that ruling, we determined the authority: (1) may withhold certain information under section 552.107 of the Government Code, (2) must withhold an e-mail address under section 552.137 of the Government Code, and (3) must release the remaining information. In Open Records Letter No. 2010-06854, we held section 552.111 was inapplicable to an e-mail and related attachment and that, as a consequence, those documents must be released. You now seek to withhold the same e-mail and attachment under section 552.107 of the Government Code. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential by law. *See Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); see also Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law).* Accordingly, pursuant to section 552.007, the authority may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential by law. As noted above, you now raise section 552.107 for an e-mail and attachment we previously ordered released. Section 552.107 does not prohibit the release of information or make information confidential. *See Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) and Texas Rule of Evidence 503 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally).* The authority does not present any law, and we are unaware of any, that expressly prohibits release of this e-mail and its attachment, or that makes these documents confidential. Thus, we conclude the authority must continue to rely on Open Records Letter No. 2010-06854 as a previous determination and withhold or release all of the submitted information in accordance with that ruling. *See Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).* As our ruling is dispositive, we need not address your claimed exceptions to disclosure.

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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a stylized flourish at the end.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 379836

Enc. Submitted documents

cc: Requestor
(w/o enclosures)