



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 12, 2010

Ms. Anne M. Constantine  
Legal Counsel  
Dallas/Fort Worth International Airport  
P.O. Box 619428  
DFW Airport, Texas 75261-9428

OR2010-12267

Dear Ms. Constantine:

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# 390248.

The Dallas Fort Worth International Airport Board (the "board") received a request for all e-mails and instant messages between two named employees from February 1, 2010 to the date of the request. You state you have released or will release some of the requested e-mails. You claim that the remaining e-mails are not subject to the Act. We have considered your arguments and reviewed the submitted information.

You claim that the submitted e-mails are not subject to the Act. The Act is applicable only to "public information." See Gov't Code §§ 552.002, .021. Section 552.002(a) provides that "public information" consists of

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). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You claim that the submitted e-mails are not subject to the Act because they were not collected, assembled, or maintained in connection with the transaction of the board's official business. You explain the submitted e-mails are of a personal nature and took the employees who created them no more than a *de minimus* amount of time to send or receive. Based on your representations and our review of the submitted information, we conclude that the e-mails we have marked do not constitute public information for the purposes of section 552.002. See Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Therefore, the e-mails we have marked are not subject to the Act, and the board need not release them in response to this request. However, the remaining e-mails consist of communications between two board employees and relate to board business. Therefore, we conclude these e-mails were collected or assembled or are maintained in connection with the transaction of official board business and, thus, constitute "public information" as defined by section 552.002(a).

Next, we must address the board's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. See Gov't Code § 552.301(e). You state the board received the request for information on May 26, 2010. Thus, the board's fifteen-business-day deadline was June 17, 2010. However, the envelope in which you submitted the requested information bears a postmark date of June 18, 2010. See *id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the board failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. See *id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); see also Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists when the information is made confidential by another source of law or third party interests are at stake. See Open Records Decision No. 630 (1994). In this instance, you raise

no exceptions to disclosure of the information subject to the Act. Therefore, the information subject to the Act 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, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 390248

Enc. Submitted documents

c: Requestor  
(w/o enclosures)