



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2010

Mr. Thomas Bailey  
Legal Services  
VIA Metropolitan Transit  
P.O. Box 12489  
San Antonio, Texas 78212

OR2010-13883

Dear Mr. Bailey:

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# 393700.

VIA Metropolitan Transit ("VIA") received a request for the following: (1) the full reports of the Environmental Study Assessment, phases one through three, conducted for a specified property; and (2) the results of any pending asbestos surveys or environmental studies pertaining to two specified properties and the cost breakdown for the remediation of those properties. You state VIA has released or will release all of the responsive documents pertaining to one of the properties specified in the request. You claim the submitted information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) of the Government Code provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). The submitted Environmental Study Appraisal reports are completed reports subject to section 552.022(a)(1). Therefore, VIA may only withhold this information if it is subject to section 552.108 or confidential under "other law." Section 552.105 is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision No. 564 (1990) (statutory predecessor to section 552.105 subject

to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the submitted completed reports may not be withheld under this exception. We note, however, that a portion of the submitted information may be subject to section 552.137 of the Government Code.<sup>1</sup> Section 552.137 is "other law" for the purposes of section 552.022(a)(1). Therefore, we will consider whether this exception is applicable to the information at issue.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). We note section 552.137(a) does not apply to the e-mail address provided by a person who has a contractual relationship with the governmental body or by the contractor's agent. *Id.* § 552.137(c)(1). Therefore, VIA must withhold the e-mail address we have marked under section 552.137, unless VIA receives consent for its release. However, to the extent this personal e-mail address falls under any of the exceptions listed under subsection 552.137(c), the marked e-mail address may not be withheld under section 552.137.

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1978). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, to the extent the e-mail address we have marked is not excluded by subsection (c), it must be withheld under section 552.137 of the Government Code, unless VIA receives consent for its release.<sup>2</sup> As you raise no further exceptions to disclosure, the remaining information must be released to the requestor, but any information that is protected by copyright may only be released in accordance with copyright law.

---

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

<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/tp

Ref: ID# 393700

Enc. Submitted documents

c: Requestor  
(w/o enclosures)