



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2011

Ms. Laura Simank
Aransas Pass Housing Authority
254 North 13th Street
Aransas Pass, Texas 78336

OR2011-08468

Dear Ms Simank:

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# 421738.

The Aransas Pass Housing Authority (the "authority") received three request from the same requestor for 1) time cards and pay checks for employees during a specified time period, 2) bid request copies for work done and equipment purchased for the authority, and 3) purchase orders during a specified time period. We understand you to claim some of the requested information is not subject to the Act. We have considered your arguments.

We understand you to claim portions of the requested time cards and pay checks are not subject to the Act. The Act is applicable to "public information," as defined by section 552.002 of the Government Code. 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.

Gov't Code § 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). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a).

You claim the authority is only required to release specified categories of information in response to the first request. We disagree. Information is within the scope of the Act if it relates to the official business of a governmental body and is maintained by a public official or employee of the governmental body. *See* Gov't Code § 552.002(a). We note the requestor seeks information regarding public employees' time cards and pay checks. This information was collected, assembled, or maintained in connection with the transaction of official authority business and, thus, constitute "public information" as defined by section 552.002(a).¹ Therefore, because any such information is subject to the Act, it must be released unless it falls within the scope of an exception to disclosure. *See* Gov't Code §§ 552.301, .302.

Next, you claim the second and third requests for information are only attempts to harass the authority and would require producing a huge volume of material. We note a governmental body may not refuse to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976); *see also* Open Records Decision No. 497 at 4 (1988) (fact that submitting copies for review may be burdensome does not relieve governmental body of its responsibility to do so). We also note section 552.222 of the Government Code authorizes a governmental body to ask the requestor to clarify or narrow requests for information that are unclear or burdensome. *See* Gov't Code § 552.222(b). Further, this office has determined the Act does not permit the consideration by a governmental body or this office of a requestor's intended use of information when responding to open records requests. Gov't Code § 552.222(a) (stating governmental body may not inquire into purpose for which information will be used); *see also* Open Records Decision Nos. 508 (1988) at 2 (motives of a person seeking information under the Act are irrelevant), 51 (1974).

You also claim the requestor knows there was not a purchase order system in place prior to a certain time period. We are unable to determine whether the authority maintained documents responsive to this portion of the request prior to its receipt of the request. We note the Act does not require a governmental body to make available information that did not exist when the request was received nor does it require a governmental body to compile information or prepare new information. *See Economic Opportunities Dev. Corp. v.*

¹We note salary information and information related to the receipt or expenditure of public funds are included in the categories of information that the Act specifically makes public. Gov't Code § 552.022(a).

Bustamante, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, the authority is required to make a good faith effort to relate the request to information that is within the authority's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). While, the authority is not required to create a document in response to a request for information, information from which responsive information may be derived would be responsive to the request. Thus, to the extent the authority maintained information from which the information at issue may be derived on the date the request was received, we find such information is responsive to the requests at issue. *See* Gov't Code §§ 552.002.

Next, we must address the authority's procedural obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving a request. *See id.* § 552.301(b). Pursuant to section 552.301(e) of the Government Code, a 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 id.* § 552.301(e). As of the date of this letter, you have not submitted to this office a copy or representative sample of the information requested nor have you stated the exceptions that apply. Consequently, we find the authority failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no petition.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). In this instance, you do not raise any exceptions to disclosure. Additionally, as you have not submitted the requested information for our review, we have no basis for finding any of the information confidential by law. We therefore conclude the authority must release the requested information pursuant to section 552.302 of the Government Code. If you believe this information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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 'Tamara Wilcox', written in a cursive style.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 421738

No enclosures

c: Requestor