



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 17, 2003

Mr. Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
333 Guadalupe, Suite 3-810
Austin, Texas 78701

OR2003-4969

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184549.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for "all current, non-exempt and non-confidential . . . e-mail addresses," including but not limited to those of employees and licensees. You ask whether the e-mail addresses of board licensees are excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed a sample of the information at issue.¹

Initially, we note your statement that the board "has determined to release those employee e-mail addresses that are not excepted from disclosure under" sections 552.024 and 552.117 of the Government Code. We assume that this statement refers to employees' personal e-mail addresses and not their public workplace e-mail addresses assigned to them by the board. We also infer from your statement that you have determined to withhold some

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

employees' personal e-mail addresses from disclosure under sections 552.024 and 552.117.² However, you did not ask this office to consider whether employee personal e-mail addresses are excepted from disclosure. Because the board has not received a previous determination regarding its employees' personal e-mail addresses, section 552.301 of the Government Code required the board to request a ruling from this office within ten business days of the request as to whether this information is excepted from disclosure. See Gov't Code § 552.301(a), (b); Open Records Decision No. 673 (2001) (describing two types of previous determinations). You failed to request a decision regarding employees' personal e-mail addresses within the ten business day period, and therefore this information is presumed to be public information. Gov't Code § 552.302. Information that is presumed public must be released unless a compelling reason exists to overcome this presumption. See *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); Open Records Decision No. 319 (1982). Section 552.137 of the Government Code constitutes a compelling reason that overcomes the presumption of openness. See Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Therefore, we will consider whether the employees' personal e-mail addresses are excepted from disclosure under section 552.137.

Section 552.137 of the Government Code provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act]." We note that section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or website address. Therefore, section 552.137 applies to the e-mail addresses of a board licensee, to the extent that the e-mail address at issue is not a business's general e-mail address. Section 552.137 also applies to the personal e-mail addresses of board employees. You do not inform us that any of these individuals has affirmatively consented to the release of any the requested e-mail addresses. Therefore, unless the individual has affirmatively consented to its release, the board must withhold the personal e-mail address of each employee and the e-mail address of each licensee, to the extent that e-mail address is not a business's general e-mail address. See Gov't Code § 552.137(b).

²Although you discuss sections 552.024 and 552.117 with regard to the personal e-mail addresses of board employees, we note that section 552.137 provides explicit protection for certain e-mail addresses. Therefore, this ruling addresses the applicability of section 552.137 to the personal e-mail addresses of board employees.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive style with a large initial "K".

Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/sdk

Ref: ID# 184549

Enc: Submitted document

c: Mr. Brad L. Armstrong, J.D.
206 Westwood Terrace
Austin, Texas 78746
(w/o enclosures)