



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 1, 1996

Mr. David A. Miller
Miller & Lehman, A P.C.
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201-3340

OR96-0650

Dear Mr. Miller:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39452.

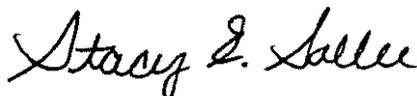
The Mountain Peak Water Supply Corporation (the "corporation"), which you represent, received two requests for information. The first request is for "all itemized invoices, statements and/or letters for legal fees (including other professional fees and costs) and expenses that have been paid to MILLER & LEHMAN by Mountain Peak WSC for the period from July 1, 1992 to the present." You claim that the information sought in the first request is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. The second request is for copies of the corporation's meeting notices and meeting minutes regarding deliberations for Mountain Peak Well No. 2. You state that the corporation has no documents that are responsive to this request. Therefore, the corporation need not respond to the second request.

Chapter 552 of the Government Code imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See Gov't Code* § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, 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).

You claim that, as previous determinations exist addressing the categories of information that were requested, the corporation was not required to seek an opinion from this office. We disagree. An attorney general's opinion must be sought whenever the applicability of a particular exception to particular information has not already been determined. Open Records Decision No. 435 (1986). Where only the *standard* to be applied has been addressed, the *applicability* of the standard to particular information must be determined by the attorney general. *Id.*; *cf. Houston Chronicle Publishing Co. v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989) (Open Records Act does not require previous determination on specific piece of information previously determined to be public; *attorney general* has discretion to determine when previous determination has been made regarding category of information to which request belongs); *see Rainbow Group, Ltd. v. Texas Employment Comm'n*, 897 S.W.2d 946 (Tex. App.--Austin 1995, writ denied) (holding that because information was *per se* confidential by statute, governmental body was not required to seek ruling from attorney general). This office has consistently held that previous determinations apply only to fungible information; for example, forms or other similar interchangeable types of information. Information purportedly within the attorney-client privilege and attorney work product is not fungible but must be reviewed by this office on a case-by-case basis. Therefore, the corporation was required to seek an opinion on this type of information.

As the corporation received this request for information in January, 1996 and did not request an opinion from this office until March 14, 1996, the corporation did not meet its obligations under chapter 552 of the Government Code, and thus, the information is presumed to be public. Open Records Decision No. 195 (1978). We note that this office has previously held that a demonstration of the applicability of either section 552.103 or section 552.107(1) does not constitute a compelling reason to overcome a presumption of openness. *See* Open Records Decision Nos. 630 (1994) (Gov't Code § 552.107), 473 (1987) (Gov't Code § 552.103). Therefore, the corporation must release the requested information. If you have any questions regarding this matter, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 39452

Enclosures: Submitted documents

cc: Mr. J. B. Clopton, Jr.
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(w/o enclosures)