



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 7, 1998

Ms. Julie B. Ross
Haynes & Boone, L.L.P.
901 Main Street, Suite 3100
Dallas, Texas 7520203789

OR98-1884

Dear Ms. Ross:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117597.

You state that the City of Coppel (the "city"), which you represent, received a verbal request for information that you contend this office has previously held to be excepted from required public disclosure. Specifically, the requestor seeks the city's correspondence to this office in which the city sought an open records decision. In Open Records Letter No. 98-1084 (1998), this office determined that certain of the city's records were excepted from required public disclosure pursuant to section 552.103 of the Government Code. You now contend that, because the city's letters to this office, dated March 10, 1998 and March 16, 1998, requesting an open records decision in that matter contained some of the same information that this office held to be excepted from required public disclosure in Open Records Letter No. 98-1084 (1998), the city's letters to this office are thereby also excepted from public disclosure under that open records ruling.

It has generally been the practice of this office to treat a governmental body's letter requesting an open records decision as being available to the public. Accordingly, this office will release such letters to members of the public upon request unless the governmental body has otherwise demonstrated that the letter, or portions thereof, are excepted from required public disclosure. In Open Records Decision No. 459 (1987), this office established the procedure that a governmental body must follow in order to withhold information contained in its request for an open records decision where we have determined that the information is otherwise excepted from required public disclosure:

Whenever we conclude that a governmental body may legally deny a request for information, we have necessarily found that the information is within an exception . . . of the act. To require a governmental body to disclose the contents of its request letter, when to do so would reveal information which we have previously held is within [an] exception, would effectively negate our previous conclusion. We therefore conclude that, when we have held information to be within [an] exception, that exception authorizes the governmental body to withhold the portion(s) of its request letter that would disclose this information. *A governmental body which receives a request for its request letter and wishes to withhold part or all of its contents must seek our decision.* [Emphasis added.]

In requiring the governmental body to seek an additional ruling from this office to withhold information contained in a decision request, Open Records Decision No. 459 (1987) necessarily requires that the governmental body comply with the procedural requirements of section 552.301 of the Government Code and by implication suggests that the prior ruling issued by this office would not constitute a "previous determination" for purposes of section 552.301(a). Section 552.301(a) provides as follows:

A governmental body that receives a *written* request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time *but not later than the 10th business day after the date of receiving the written request.* For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission. [Emphasis added.]

As stated above, you have characterized the current request received by the city as being verbal, and under similar circumstances, this office would not deem such a request for an open records decision as being ripe for action from this office. In this instance, however, the requestor has submitted to this office a copy of a written request he served on the city that bears the city's stamped date of April 30, 1998 and that seeks the following information: "All correspondance [sic] with the Office of the Attorney General of Texas; beginning 1-01-97 and ending 4-30-98." (Copy enclosed.) This written request encompasses the correspondence you now seek to withhold. Although the city received this written request on April 30, 1998, you did not request a decision from this office until June 3, 1998. We

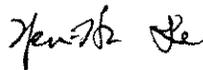
therefore conclude that the city failed to timely request a decision from this office in accordance with section 552.301 and Open Records Decision No. 459 (1987).

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See Hancock*, 797 S.W.2d at 381.

You have not shown compelling reasons why the information at issue should not be released. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the requested records should not be made public, you must release the information at issue in its entirety. *See also* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/nc

Ref: ID# 117597

Enclosures: Submitted documents
Kwast's request dated April 30, 1998

cc: Mr. Arthur Kwast
P.O. Box 1394
Coppell, Texas 75019-1397
(w/o enclosures)