



December 23, 1999

Ms. Maria Salinas Parker  
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OR99-3753

Dear Ms. Parker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130970.

The Kleinwood Municipal Utility District (the "district") which you represent, received a request for various pieces of information regarding the district's request for bids and its awarding of a contract for the rehabilitation of a sanitary sewer line. You have already provided the requestor with some of the requested documents. However, you claim that professional references regarding one of the contractors who submitted a bid, and a related memorandum are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, 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 10<sup>th</sup> business day after the date of receiving the written request." Gov't Code § 552.301(b). Within that same ten-day period, the governmental body must also provide the requestor with a written statement that the governmental body has asked for an attorney general decision about whether the requested information falls under an exception to required public disclosure, and a copy of the governmental body's communication to the attorney general asking for the decision. Gov't Code § 552.301(d). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

You have failed to inform this office of the date that the district received the request for information.<sup>1</sup> However, you have submitted a letter dated October 13, 1999 that you sent to the requestor in which you acknowledge receipt of the request. The requestor has also submitted a copy of this letter to us in order to show that at the very latest, the district received the request on October 13, 1999. We note that the copy of the request that you submitted to us indicates that it was sent to you via facsimile on October 6, 1999. The district missed its ten-day deadline regardless of whether the district received the request on October 6, 1999, or October 13, 1999. Even if we were to assume that the district received the request on the latter of the two dates, the department's deadline for requesting an attorney general decision, and for notifying the requestor of such, would have expired ten business days later on October 27, 1999. *See* Gov't Code § 552.301(b). However, the Federal Express envelope in which you sent to this office the request for an attorney general decision indicates that you sent the request on October 29, 1999.<sup>2</sup> Moreover, the requestor informs us that he did not receive a copy of this correspondence "until on or about October 29, 1999." Therefore, the district missed its ten-day deadline in regard to its required communications to this office and to the requestor. Because you have not presented a compelling reason to withhold the information, the submitted documents must be released. *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).

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

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<sup>1</sup>Note that section 552.301(e)(1) requires you to submit to this office "a signed statement as to the date on which the written request for information as received . . . or evidence sufficient to establish that date."

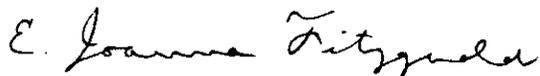
<sup>2</sup>We did not actually receive your request until November 1, 1999.

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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF/ljp

Ref: ID# 130970

Encl. Submitted documents

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