



February 7, 2001

Mr. M. Forrest Anderson, Director
Middle Rio Grande Development Council
P.O. Box 1199
Carrizo Springs, Texas 78834

OR2001-0481

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 144209.

The Middle Rio Grande Development Council (the "council") received a request for information relating to a regional 9-1-1 system. You have released some of the requested information. You claim that the rest of the responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and have reviewed the materials you submitted.

Initially, we must address the council's failure to comply with section 552.301 of the Government Code in asking for this attorney general decision. Section 552.301 prescribes the procedures that a governmental body must follow if it wishes to withhold requested information from public disclosure. Section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request [for information]." Gov't Code § 552.301(b). Section 552.301(e) provides in relevant part:

(e) A governmental body that requests an attorney general decision . . . must . . . not later than the 15th business day after the date of receiving the written request [for information]:

(1) submit to the attorney general:

...

(C) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and

(D) a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested[.]

Gov't Code § 552.301(e)(1)(C)-(D). Section 552.302 provides in relevant part that “[i]f a governmental body does not request an attorney general decision *as provided by Section 552.301* . . . the information requested in writing 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 (emphasis added).

In this instance, you have not informed this office of the specific date on which the council received the written request for the information in question, as required by section 552.301(e)(1)(C). Based on the council's correspondence with the requestor, however, the council clearly appears to have received the request for the information at issue no later than July of last year. The council asked for this attorney general decision by letter dated November 29, 2000. Thus, the council failed to comply with section 552.301(b) in asking for this decision. Moreover, the council failed to submit to this office the information that it seeks to withhold or a representative sample of that information. Thus, the council also failed to comply with section 552.301(e)(1)(D) of the Government Code in asking for this decision. Therefore, the information at issue is presumed to be subject to required public disclosure under section 552.302.

As a general rule, a governmental body can overcome the operation of section 552.302 by showing that the requested information is deemed to be confidential under some other source of law or that the interests of third parties are at stake. *See* Open Records Decision No. 630 at 3 (1994). Thus, a demonstration that information is excepted from disclosure under section 552.101 of the Government Code may overcome the presumption under section 552.302 that the requested information must be released. *Id.* In this instance, you assert that the information withheld by the council is confidential under section 552.101 in conjunction with section 771.061 of the Health and Safety Code. However, you have not submitted the information, so we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

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).

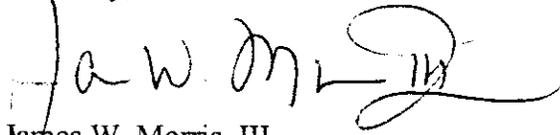
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Department of Public 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 General Services 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. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 144209

cc: Mr. Chuck Mayer
P.O. Box 3518
Corpus Christi, Texas 78463