



January 8, 2002

Mr. James Minor
City Administrator
City of Keene
100 N. Mockingbird
Keene, Texas 76059-2323

OR2002-0109

Dear Mr. Minor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156492.

The City of Keene (the "city") received a request for the city's potable water supply system plans and lines, the sewer system plans and lines, and all documents concerning water quality testing from January 2000 to September 2001. You assert that the requested systems' plans and lines are excepted from public disclosure under section 552.101 of the Government Code. We have considered the exception you claim and the city's arguments.

First, we note that you have submitted no arguments as to the request for documents concerning water quality testing from January 2000 to September 2001. Section 552.301(e) of the Government Code requires the city to submit written comments stating the reasons why each exception that you raised would allow the information to be withheld. Failure to comply with section 552.301 results in the presumption that the information is public. Gov't Code § 552.302. Thus, the city must release documents concerning water quality testing from January 2000 to September 2001.

Next, the city generally asserts in its original brief that the plans and lines for the city's water and sewer systems are confidential under section 552.101 of the Government Code. On November 13, 2001, this office requested additional information from the city regarding this assertion. In its response to this office's request for additional information, the city provided examples of how the information may be used to "disrupt and/or infect the City's systems," but provided no argument or authority that makes the information confidential. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of

receiving an open records request general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld. You did not, however, submit to this office written comments stating the reasons why section 552.101 would allow the information to be withheld as confidential.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body makes a compelling demonstration to overcome the presumption of openness. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ); Open Records Decision No. 319 (1982). This office has held that a governmental body makes a compelling demonstration to withhold the information by showing that the information is confidential by another source of law or affects third party interests. *See Open Records Decision No. 150 (1977)*. You have not shown such a compelling interest to overcome the presumption that the information at issue is public. Accordingly, you must release the requested information.

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 limits. 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. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 156492

c: Mr. Juan Alatorre
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Keene, Texas 76059