



May 23, 2002

Mr. Earl Keith Brown, Jr.
Systems Manager
Little Hope-Moore WSC
2391 FM 16
Canton, Texas 75103

OR2002-2761

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163338.

The Little Hope-Moore Water Supply Corporation (the “corporation”) received a written request for sixteen categories of information regarding the corporation, and you have sought a decision from this office as to whether the corporation must comply with that request.¹ You have not raised any of the exceptions to required public disclosure found in chapter 552 of the Government Code with regard to the requested information. Nor have you submitted to this office for review any of the records at issue.

Please note that the purpose of a citizen’s open records request is not a factor to be considered when a governmental body receives a records request. *See* Gov’t Code § 552.223 (requiring uniform treatment of all requests regardless of “position or occupation” of requestor). Furthermore, section 552.222(a) specifically forbids governmental bodies from making such inquiries of the requestor. Consequently, the corporation may withhold the requested information only to the extent that the information is authorized to be withheld under the Public Information Act or other applicable law. *See also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (administrative inconvenience of providing public records not grounds for refusing to comply with Public Information Act).

¹You state, however, that some responsive information has been released to the requestor.

We note at the outset that you did not make a timely request for a decision from this office. Section 552.301(a) of the Government Code requires a governmental body to request a decision from the attorney general within ten business days after receiving a request for information that the governmental body wishes to withhold, unless there has been a previous determination that the requested information is excepted from required public disclosure. *See generally* Open Records Decision No. 673 (2002). The requestor states that he made his initial records request on February 15, 2002. However, you did not request a decision from this office until March 19, 2002.

We further note that pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office any of the information required under section 552.301(e) except for the written request for information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301(a) and 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 demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

You have not shown such a compelling interest to overcome the presumption that the requested information is public. Furthermore, because you have not submitted copies of the information, we have no basis for finding that compelling reasons exist for not providing the requested information to the requestor. Thus, we have no choice but to order the information released in accordance with section 552.302.² *See also* Gov't Code § 552.224 ("The officer for public information or the officer's agent shall give to a requestor all reasonable comfort and facility for the full exercise of the right granted by this chapter.") If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

²All questions regarding the costs of supplying requested information should be referred to the General Services Commission at (512) 475-2497.

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).

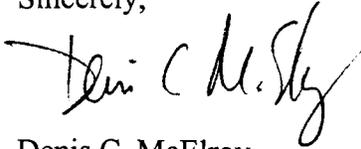
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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,

A handwritten signature in black ink, appearing to read "Denis C. McElroy". The signature is fluid and cursive, with the first name "Denis" written in a larger, more prominent script than the last name "McElroy".

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/sdk

Ref: ID# 163338

c: Mr. Gaylon Whatley
22390 East Highway 64
Canton, Texas 75103