



October 29, 2002

Mr. Anthony S. Corbett
Freeman & Corbett, L.L.P.
2304 Hancock, Suite 6
Austin, Texas 78756

OR2002-6142

Dear Mr. Corbett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171374.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received two requests for a particular spreadsheet prepared by Mr. Jimmy Griffith. Specifically, the requestors ask for a version of the spreadsheet on computer disk, that includes the formulae used to derive the data in the spreadsheet. In addition, one of the requestors asks for copies of all contracts with consultants, vouchers related to payments to a particular financial consultant, and projections of district income and expenses. With respect to this request, you state that the district will release the contracts and vouchers to the requestor. You further state that, other than the data in the spreadsheet, the district has no income or expense projections responsive to this portion of the request. We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). With respect to the requested spreadsheet, you state that the district will release a hard copy and an electronic copy, without formulae, to the requestors. However, you indicate that Mr. Griffith, a district engineer who created the spreadsheet, maintains another electronic version of the spreadsheet that includes the formulae used to derive the data in the spreadsheet. You claim that the version of the spreadsheet held by Mr. Griffith is not public information under the Act, chapter 552 of the Government Code. We have also received arguments from the requestor in favor of the release of the spreadsheet containing the formulae. See Gov't Code §552.304. We have considered all of the submitted arguments.

As you acknowledge, this office previously addressed the public availability of the spreadsheet at issue in Open Records Letter No. 2002-4244 (2002). This office issued Open

Records Letter No. 2002-4244 in connection with a prior request for this spreadsheet made by one of the current requestors. The prior request was made under generally equivalent circumstances to the present request, with the exception that at the time of the prior request, Mr. Griffith was an independent consultant providing services under contract and was not a district employee. Generally, the Act applies to information collected or maintained by a consultant if: “(1) the information relates to the governmental body's official duties or business; (2) the consultant acts as agent of the governmental body in collecting the information; and (3) the governmental body has or is entitled to access to the information.” Open Records Decision Nos. 621 at 5 n.8 (1993), 462 at 4 (1987). In Open Records Letter No. 2002-4244, this office determined that “the consultant [Mr. Griffith] was acting independently of the district in determining the formulae used to derive the information in the spreadsheet. Furthermore, the district does not have a right of access to the information.” We therefore concluded that, for purposes of that prior request, the spreadsheet with formulae was not public information under the Act and need not be released to the requestor. *See* Open Records Decision Nos. 621 at 5 n.8 (1993), 462 at 4 (1987); *see also* Open Records Decision No. 585 at 2 (1991).

In this case, the requestors seek the same spreadsheet addressed in Open Records Letter No. 2002-4244. You note that since the time of this ruling, Mr. Griffith's status has changed from independent contractor to district employee. Nevertheless, you contend that the status of the spreadsheet with formulae has not changed since the prior request. You argue that since Mr. Griffith “has not worked on the spreadsheet since he became an employee,” the spreadsheet with formulae is not information related to the transaction of official business of the district. Furthermore, you state that the district does not have a right of access to the spreadsheet. Based on your representations that the formulae used to derive the information in the spreadsheet were created by an independent contractor acting independently of the district, the district does not have a right of access to the information, and the information is not used in connection with the transaction of official business, we conclude that the version of the spreadsheet with formulae is not public information subject to the Act. *See* Open Records Decision Nos. 621 (1993), 462 (1987); *see also* Open Records Decision No. 585 (1991).

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 171374

Enc: Submitted documents

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