



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 1, 2003

Mr. Richard C. Mosty
Attorney for Headwaters Groundwater Conservation District
222 Sidney Baker South, Suite 400
Kerrville, Texas 78028

OR2003-2223

Dear Mr. Mosty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178686.

The Headwaters Groundwater Conservation District (the "district"), which you represent, received a request for information relating to a certain police report. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

We begin with a procedural matter, whether the district complied with section 552.301 of the Government Code. The requestor asserts that the district did not timely provide the requestor a copy of the district's letter to this office in accordance with section 552.301(d)(2). *See* Gov't Code § 552.301(d)(2) (governmental body must, within ten business days, provide requestor copy of its written communication to attorney general asking for decision). Because this office felt that it needed additional information to determine whether the district timely complied with the requirements of section 552.301(d), we requested by correspondence sent to you by facsimile on April 4, 2003, a copy of all information the district sent to the requestor and an explanation of when such information was sent. *See* Gov't Code § 552.303(c). Our correspondence to the district informed you that the district had seven calendar days to submit to this office the additional information requested. Gov't Code § 552.303(d). You responded to our correspondence in a timely manner. *See* Gov't Code § 552.303(e) (failure to timely provide this office the information requested under section 552.303 results in the presumption that the information responsive to the request is public information and must be released unless there exists a compelling reason to withhold the information). You state that your file reflects that a copy of your correspondence with this office was enclosed with your January 23 letter to the requestor. However, you also state that you do not know if you inadvertently did not include your correspondence with this

office in your January 23 letter to the requestor. Furthermore, in response to our request that you provide us with a copy of any correspondence or information sent to the requestor, you did not submit a copy of your correspondence with this office. Therefore, we find that you have provided insufficient evidence to contradict the requestor's assertion that the district failed to timely provide her with a copy of its correspondence with this office. Accordingly, we find that the district has failed to comply with section 552.301(d)(2).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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). Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 is a discretionary exception under the Public Information Act (the "Act") and does not demonstrate a compelling reason to withhold information from the public. *See, e.g., Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). *See also* Open Records Decision Nos. 665 at 2 n.5 (2000) (governmental body may waive litigation exception, section 552.103), 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential), 473 at 2 (1987) (failure to meet 10-day deadline waived protections of sections 552.103 and 552.111). Thus, none of the submitted information may be withheld from disclosure under section 552.103.

We note that the submitted documents contain information made confidential under section 552.136. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value;
or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code §552.136. We have marked the information that the district must withhold under section 552.136.

Finally, we note that portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 provides that “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act].” Therefore, unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, the district must withhold the e-mail addresses in the submitted information, a representative sample of which we have marked under section 552.137.

In summary, the district must withhold account numbers we have marked in the submitted documents under section 552.136. E-mail addresses in the submitted information must be withheld under section 552.137. The remaining information must be released to the requestor.

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 Dep't of Pub. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 178686

Enc: Submitted documents

c: Ms. Bonnie Arnold
Editor
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(w/o enclosures)