



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 3, 2003

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

OR2003-2258

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# 179043.

The Brushy Creek Municipal Utility District (the "district") received a request for (1) documents related to an item discussed by the Board of Directors of the district at its January 9, 2003 meeting; (2) documents executed to authorize Georgetown Title to perform title research and approve payment therefor; and (3) documents executed to retain services of Larry Kokel for appraisal of real property interests. You state that there are no responsive documents to items (2) and (3) of the request. You claim that certain information responsive to item (1) is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

We begin by addressing the requestor's argument that the district did not comply with section 552.301 of the Government Code. Section 552.301(b) provides:

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request.

Gov't Code § 552.301(b). The requestor argues that the ten allowable workdays expired prior to the submission of the district's request on February 3, 2003, and further argues that because the district's claimed exception is a discretionary exception, the requested information should be released. You explain, and provide documentation showing, that the requestor made a request on January 14, 2003. On January 21, 2003, the district informed the requestor that there were no responsive documents to a portion of the request, and asked the requestor to clarify his request. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is

requested is unclear to the governmental body). Thus, the ten day time period to request a decision under section 552.301(b) was tolled on January 21, 2003. *See* Gov't Code § 552.301(b); Open Records Decision No. 663 at 5 (1999) (providing that ten-day period is tolled during the clarification process). You also inform us that the district's office was closed on January 20, 2003 for MLK Day, an official holiday. On January 23, 2003, the district received correspondence from the requestor in which he requested a list of available documents related to the subject from which he would select documents to inspect, and which requested documents indicating what Georgetown Title and Larry Kokel will be paid and what the scope of their duties will be. On January 28, 2003, the district provided the requestor a list of documents. On January 29, 2003, the requestor selected documents from the list; consequently, the ten-business-day period resumed on January 29. You submitted your request for a decision from this office on February 3, 2003; accordingly, we conclude that you timely requested a decision from this office pursuant to section 552.301 of the Government Code regarding the clarified request.

The requestor argues he clarified his request on January 28, 2003 and that MLK Day was not a district holiday. However, even if the clarification occurred on January 28 and MLK Day was a business day, these facts do not affect the timeliness of the request for a decision from this office. The request was made on January 14, 2003. The clarification was sought four days later. If clarification was made on January 28 and MLK Day was a business day, then the ten days would expire on February 3, 2003.

When the requestor requested a list of available documents for clarification purposes, he also made a request for new information. We note that you have not submitted any information responsive to the new request for documents indicating what Georgetown Title and Larry Kokel will be paid and what the scope of their duties will be for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.

We will now address your claimed exception for the submitted information. Section 552.105 of the Government Code excepts from disclosure information relating to:

- (1) the location of real or personal property for a public purpose prior to public announcement of the project; or
- (2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Section 552.105 is designed to protect a governmental body's planning and negotiating position with regard to particular transactions. Open Records Decision Nos. 564 (1990), 357 (1982), 310 (1982). Information excepted under section 552.105 that pertains to such negotiations may be excepted so long as the transaction is not complete. Open Records

Decision No. 310 (1982). A governmental body may withhold information “which, if released, would impair or tend to impair [its] ‘planning and negotiating position in regard to particular transactions.’” Open Records Decision No. 357 at 3 (1982) (quoting Open Records Decision No. 222 (1979)). The question of whether specific information, if publicly released, would impair a governmental body’s planning and negotiation position in regard to particular transactions is a question of fact. Accordingly, this office will accept a governmental body’s good faith determination in this regard, unless the contrary is clearly shown as a matter of law. Open Records Decision No. 564 (1990).

You state that the responsive information includes a map identifying the proposed route and location of the district’s water transmission project. You assert that release of the map to the public would “severely harm the District by compromising its negotiation position in transactions with landowners for acquisition and purchase of easement interests” and that it would “directly impact and impair the District’s negotiating position with the owners of the property, because the owners may increase the purchase price of the property based on the perceived necessity of the property to the District to complete its water improvement project.” Based on your representations and our review of the submitted information, we believe that you have demonstrated the applicability of section 552.105 and conclude that the district may withhold the submitted information under section 552.105 of the Government Code.¹

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

¹You also ask whether the submitted map may be excepted from disclosure based on a previous determination. The district may not withhold the map based on a previous determination as the map at issue has been updated and is therefore not the precise record previously ruled upon. The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 179043

Enc. Submitted documents

c: John C. McLemore
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(w/o enclosures)