



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 24, 2003

Mr. Patrick W. Lindner
Davidson & Troilo
7550 West IH-10, Suite 800
San Antonio, Texas 78229-5815

OR2003-4323

Dear Mr. Lindner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183272.

The Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1 (the "district"), which you represent, received a request for several categories of information related to individuals that the district alleges are polluting, complaints the district has filed with the Springhills Water Management District and/or the Texas Commission on Environmental Quality, and alleged violations and violators of the Clean Water Act. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.106, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim. We have also considered comments submitted to this office by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we believe that a prior ruling, Open Records Letter No. 2003-2367 (2003), answers your question concerning whether a portion of the requested information is excepted from public disclosure. From our review of the request, we find that the current request encompasses some of the information that was at issue in your previous request for a decision. In our previous decision concerning this information, Open Records Letter No. 2003-2367, we found that the district may withhold the names and addresses of the individuals to whom the district has sent certain notice letters under section 552.103 of the Government Code. Based on your representation, we understand that the four criteria for a "previous determination" established by this office in Open Records Decision

No. 673 (2001) have been met.¹ Therefore, the district may rely on Open Records Ruling No. 2003-2367 to withhold this information. *But see* Open Records Decision No. 350 (1982) (applicability of section 552.103(a) ends once litigation has been concluded).

In regard to the remaining categories of requested information, we note that the district has failed to provide this office with written comments stating the reasons why the claimed exceptions apply or a copy of the specific information requested or representative samples of the information within the fifteen business day time period prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301. 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).

You claim sections 552.103, 552.106, 552.107, and 552.111 of the Government Code. However, these exceptions are discretionary exceptions under the Act and do not constitute compelling reasons sufficient to overcome the presumption of openness. *See 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) (discretionary exceptions in general), 630 (1994) (section 552.107 is discretionary exception), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception). Therefore, you may not withhold the remaining requested information under sections 552.103, 552.106, 552.107, or 552.111 of the Government Code. You also claim section 552.101 of the Government Code as an exception to disclosure. Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Thus, section 552.101 can provide a compelling reason for overcoming the presumption of openness. However, because you have not submitted the information, we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

¹The 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 Public Information Act (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).

In summary, we conclude that the district may rely on Open Records Letter No. 2003-2367 to withhold the names and addresses of the individuals to whom the district has sent certain notice letters. All remaining requested information must be released.²

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

²We note that the Act does not require the district to answer factual questions, perform legal research, or create new information in responding to a request. See Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989); see also *AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681 (Tex. App.—Eastland, pet. denied). Additionally, we note that the Act does not require the district 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). However, the district must make a good faith attempt to relate a request to information it holds. See Open Records Decision No. 561 at 8 (1990).

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/seg

Ref: ID# 183272

c: Mr. K.H. Schneider
County Attorney
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