



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 26, 2003

Mr. Joe D'Auria  
City Secretary  
City of Runaway Bay  
101 Runaway Bay Drive  
Runaway Bay, Texas 76426

OR2003-5977

Dear Mr. D'Auria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186614.

The City of Runaway Bay (the "city") received a request for the city's mowing database, including certain specified information. You state that you have released some responsive information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

We note that the city has failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301(b) of the Government Code provides that a governmental body that wishes to withhold requested information must "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written

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<sup>1</sup>We note that in your second submission to this office you claim sections 3(a)(10) and 3(a)(4) as exceptions to disclosure. These sections have been renumbered sections 552.110 and 552.104. See Act of May 4, 1993, 73<sup>rd</sup> Leg., R.S. ch. 268, § 46, 1993 Tex. Gen. Laws 583, 986; *Id.* § 1, 1993 Tex. Gen. Laws 583, 594-607.

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. Gov't Code § 552.301(e)(1)(A)-(D). The documentation you have sent this office indicates that the city received the present request on May 30, 2003. However, you did not request a ruling until June 19, 2003 and raised only section 552.104 in that request. Furthermore, you did not submit a copy of the written request for information or a copy of the specific information requested for our review until July 1, 2003. Thus, the city has failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of 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 section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You assert sections 552.104 and 552.110 of the Government Code. Section 552.104 is a discretionary exception that protects the governmental body's interests and may be waived. *See* Open Records Decision Nos. 592 at 8 (1991) (predecessor to section 552.104 is designed to protect interests of governmental bodies and not interests of third parties), 522 at 4 (1989) (discretionary exceptions in general). Consequently, the city may not withhold the information under section 552.104. However, because section 552.110 can provide a compelling reason to overcome the presumption that the information is public, we will address its applicability. *See* Open Records Decision No. 150 (1977).

Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. Section 552.110 is not applicable to the property interests of a governmental body. *See* Gov't Code § 552.110. Furthermore, we have no indication that you have notified any third party of its right to submit arguments to this office on its behalf pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). Finally, because the city has not submitted any arguments in opposition to disclosure under section 552.110, and because this office has not

received arguments from any third party whose potential proprietary interests may be implicated, we have no basis for finding that the information at issue may be withheld. Thus, because you raise no other exceptions to disclosure, and the submitted information is not otherwise confidential, we conclude the city must release the submitted information to the requestor in its entirety.

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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 186614

Enc. Submitted documents

c: Mr. Johnny Rupe  
1010 West Belknap  
Jacksboro, Texas 76458  
(w/o enclosures)