



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

September 26, 2003

Mr. James R. Adams, P.E.
General Manager
San Jacinto River Authority
P.O. Box 329
Conroe, Texas 77305-0329

OR2003-6790

Dear Mr. Adams:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188366.

The San Jacinto River Authority (the "authority") received a request for information pertaining to Ayers Island on Lake Conroe. You state that you have provided the requestor with some responsive information. You also state that the authority did not consider the request to be a proper request for information under the Public Information Act (the "Act") prior to the date of your conversation with our office regarding the request. You claim that the remaining requested information is excepted from disclosure pursuant to section 552.104 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 that person may submit comments stating why information should or should not be released).

Initially, we note your assertion that the authority did not consider the request to be a proper request for information under the Act because the requestor asked for the release of the information pursuant to the federal Freedom of Information Act. A governmental body must make a good faith effort to relate a request to information which it holds. *See Open Records Decision No. 561 at 8* (1990). Generally, a request for information need not name the Act nor be addressed to a governmental body's officer for public information in order to be a valid request for information under the Act. *See Open Records Decision Nos. 497 at 3* (1988), *44 at 2* (1974). Furthermore, a hyper-technical reading of the Act does not effectuate the purpose of the Act. *See id.* A written communication that reasonably can be judged to

be a request for public information is a request for information for purposes of the Act. *See id.* In this instance, we find that the written communication provided to the authority by the requestor can reasonably be judged as a request for public information for purposes of the Act. Accordingly, we conclude that the authority may not withhold any portion of the submitted information on the basis that the communication provided to the authority was not made in accordance with the Act.

Next, we address the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov't Code* § 552.301(b). In addition, section 552.301(e) provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general: (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 request for information; (3) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and (4) a copy of the specific information requested or representative samples of it, if a voluminous amount of the information was requested, labeled to indicate which exceptions apply to which parts of the information. *See Gov't Code* § 552.301(e).

You state that the authority received the request for information on June 20, 2003. Therefore, the authority had until July 7, 2003 to request a decision from our office as to whether any portion of the requested information could be withheld under an applicable exception to disclosure and until July 14, 2003 to submit to our office the items required to be submitted to us pursuant to section 552.301(e). The authority did not comply with either of these procedural requirements within the period of time required under the Act. Because the authority failed to comply with the procedural requirements of section 552.301 in requesting this decision from us, the submitted information is now presumed public. *See Gov't Code* § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The authority must demonstrate a compelling interest in order to overcome the presumption that the submitted information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the authority claims that the submitted information is excepted from disclosure under section 552.104 of the Government Code, we note that this particular exception is a discretionary exception to disclosure under the Act that does not constitute a compelling interest that is sufficient to overcome the existing presumption that the submitted information

is now public.¹ Accordingly, we conclude that the authority may not withhold any portion of the submitted information under section 552.104 of the Government Code. Consequently, the authority 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).

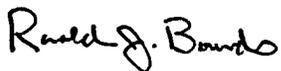
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹ Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive statutory predecessor to section 552.111); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/sdk

Ref: ID# 188366

Enc. Submitted documents

cc: Mr. Edward A. Holler
12187 Wren Cove
Willis, Texas 77318
(w/o enclosures)