



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2004

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2004-1473A

Dear Mr. Ramirez:

You asked whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. This office assigned your request ID# 196149 and issued Open Records Letter No. 2004-1473 (2004). We have since determined that an error was made in the decisional process and that Open Records Letter No. 2004-1473 (2004) is incorrect. Therefore, Open Records Letter No. 2004-1473 (2004) is hereby withdrawn. This decision is substituted for the previous decision and serves as the correct ruling.

The Lower Colorado River Authority ("LCRA") received a request for information concerning the Lometa Water Treatment Plant. You indicate that some information will be made available to the requestor. However, you claim that the remaining responsive information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹ We have also considered written comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that member of public may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We must consider the requestor's assertion that LCRA did not comply with section 552.301(d)(2) of the Government Code. Section 552.301(d)(2) requires a governmental body that requests an attorney general decision to provide the requestor with a copy of its written communication to the attorney general not later than the 10th business day after receiving the requestor's written request for information. Gov't Code § 552.301(d)(2). Pursuant to section 552.303(c) of the Government Code, this office notified you via facsimile on February 12, 2004, that additional information was needed in order to determine whether LCRA complied with section 552.301(d)(2). We requested that the additional information be provided to our office within seven calendar days of the date the notice was received. *See* Gov't Code § 552.303(d). The notice further stated that failure to submit the requisite information would result in the legal presumption that the information at issue is public. *See* Gov't Code § 552.303(e).

On February 17, 2004, you provided us with information which demonstrates that LCRA sent the requestor a copy of its written communication to this office on December 5, 2003, via certified United States mail. However, LCRA received the requestor's written request for information on November 18, 2003, and was therefore required to provide the requestor with its copy of its written communication to this office no later than December 4, 2003, the 10th business day after LCRA received the request for information. *See* Gov't Code § 552.308 (timeliness of action by United States mail). Because LCRA did not comply with section 552.301(d)(2), the information at issue is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. *See* Gov't Code § 552.302. This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). You claim that the information at issue is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. However, these exceptions are discretionary in nature; they serve only to protect a governmental body's interests and may be waived. As such, they do not constitute compelling reasons to withhold information. *See 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); Open Records Decision No. 473 (1987) (statutory predecessor to section 552.111 may be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Accordingly, we conclude that the information at issue 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 thirty calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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 ten calendar days of the date of this ruling.

Sincerely,



Karen Hattaway
Assistant Attorney General
Open Records Division

KEH/sdk

Ref: ID# 196149

Enc. Submitted documents

c: Ms. Barbara Waters
P.O. Box 200922
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(w/o enclosures)