



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2004

Mr. Van A. Currie
President
Jasper County Water Control & Improvement District #1
P.O. Box 1207
Buna, Texas 77612

OR2004-2451

Dear Mr. Currie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198743.

The Jasper County Water Control and Improvement District (the "district") received a request for a copy of the current Water Distribution Map and Flush Valve Report. You claim that the requested information is confidential under the federal Homeland Security Act. Additionally, you assert that the requested information is excepted from disclosure under sections 552.113 and 552.125 of the Government Code.

We note that the district has not fully complied with the requirements of section 552.301 of the Government Code in seeking this open records decision. Section 552.301 prescribes the procedures that a governmental body must follow when seeking to withhold responsive information from public disclosure. Specifically, the governmental body must seek a ruling from this office and state its claimed exceptions to disclosure within ten business days of receiving the written request. *See* Gov't Code § 552.301(a), (b). In addition, within fifteen days of receiving the written request, the governmental body must submit, among other things, its written comments explaining why its claimed exceptions apply and state or provide sufficient evidence of the date the governmental body received the request. *See* Gov't Code § 552.301(e)(1)(C), (D). The written request is dated January 8, 2004. The district submitted its request for a decision and stated its claimed exceptions on January 26, 2004, more than ten business days after January 8th. Since the district does not indicate when it received the written request, this office has no choice but to conclude that your request for ruling was not submitted within the statutory time frame. The district also failed to submit comments explaining why its claimed exceptions apply.

The district's failure to comply with the procedural requirements of the Public Information Act results in the presumption that the requested information is public. *See id.* § 552.302;

Hancock v. State Bd. of Ins., 797 S.W.2d 379 (Tex. App.— Austin 1990, no writ). In order to overcome this presumption of openness, the district must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381; *see also* Open Records Decision No. 150 (1977) (concluding that compelling reason exists when requested information is confidential by law or third party interests are at stake). Section 552.125 is a discretionary exception to disclosure that does not provide a compelling reason to withhold information from disclosure. *See* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Furthermore, since you did not submit any arguments under sections 552.101 and 552.113, you failed to provide a compelling reason to withhold the submitted information from disclosure under those exceptions. Moreover, you have not provided us with any basis for determining that the submitted information is confidential by law.¹ Accordingly, the requested information must be released. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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

¹We note that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential in the hands of a federal agency. *See* Attorney General Opinion MW-95 (1979) (concluding that neither Freedom of Information Act nor the federal Privacy Act of 1974 applies to records held by state or local governmental bodies in Texas); Open Records Decision No. 124 (1976) (concluding fact that information held by federal agency is excepted by Freedom of Information Act does not necessarily mean that same information is excepted under the Public Information Act when held by Texas governmental body). *But see* Open Records Decision No. 561 at 8 (1990) (stating that when federal entity shares confidential information with state agencies, that information remains confidential in the hands of state entity).

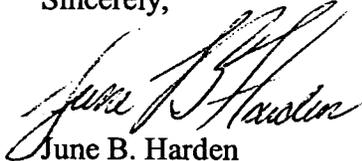
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 198743

Enc: Submitted documents

c: Ms. Debra Rogowski
Ranch Road 4 Box 406A
Buna, Texas 77612
(w/o enclosures)