



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 1, 2004

Mr. Marcos Marquez
President of the Board of Directors
Deaf Smith County Fresh Water Supply District # 1
116 Domingo St.
Hereford, Texas 79045

OR2004-7439

Dear Mr. Marquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208382.

The Deaf Smith County Fresh Water Supply District # 1 (the "district") received a request for (1) the names, mailing addresses, and telephone numbers of the district's board of directors, (2) copies of all district audit reports for the last ten years, (3) certain notices generated on behalf of the district for the last five years, (4) minutes of district board meetings for the last five years, (5) documents reflecting any sum paid by the district to a named individual and board members for the last ten years, (6) all financial documents of the district that reflect receipts or disbursements for the past ten years, (7) documentation pertaining to rates charged by the district for water, sewer, and garbage for the last ten years, and (8) copies of original by-laws governing the district as well as by-laws already in force.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which describes the procedures a governmental body must follow if it wishes to withhold information under the Public Information Act (the "Act"). Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date the governmental body receives the written request. Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general 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 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.

The district has neither stated the exceptions under the Act that would apply to the requested information nor submitted a copy of the specific information requested or representative samples within the deadlines of section 552.301.¹ 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 id.* § 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). This office has held that a compelling reason exists to withhold information when third-party interests are at stake or information is confidential under other law. Open Records Decision No. 150 (1977). The district has not provided a compelling reason to withhold the requested information; therefore, to the extent the information exists, the department must release this information. Gov't Code §§ 552.301, 552.302. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

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

¹We note that the district submitted a number of questions to us that generally pertain to procedures for withholding information under the Act. In order to provide guidance for future requests for decisions, we have enclosed this office's Public Information Handbook. In addition, we encourage you to call our office's toll-free hotline at (877) 673-6839 and visit our web site at www.oag.state.tx.us for additional guidance.

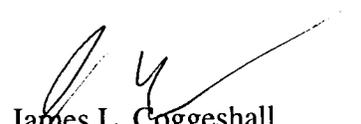
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/krl

Ref: ID# 208382

Enc. Handbook

c: Mr. Cody L. Simmons
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(w/o enclosures)