



ATTORNEY GENERAL OF TEXAS
G R E G A B B O T T

June 13, 2005

Mr. R. Rene Escobedo
Attorney at Law
123 West Rhapsody Drive
San Antonio, Texas 78216

OR2005-05180

Dear Mr. Escobedo:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225001.

The City of Dilley (the "city"), which you represent, received a request for the council reimbursement receipts for a named councilwoman and the "current history on her permanent residence." You state that some responsive information will be released to the requestor. However, you claim that the remaining requested information may be excepted from disclosure pursuant to section 552.101 in conjunction with section 182.052 of the Utilities Code. We have considered your arguments.

First, we consider your argument that a portion of the request is unclear and thus is not a proper request under the Act. Section 552.222(b) of the Government Code provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified.¹ At any rate, section 552.222 permits a governmental body to ask the requestor to clarify or narrow the scope of her request only if the governmental body determines in good faith that it cannot identify the requested information, or that the scope of information requested is unduly broad. Open Records Decision No. 663 (1999). In this instance, you have provided no indication that the city sought clarification from the requestor. Instead, you state that the city "believes the request is for utility account records" and that the city "will assume utility records are being requested." Therefore, we conclude that the request for information is proper and will consider your arguments regarding the remaining requested information.

¹ Section 552.222(b) also provides that "[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed[.]"

Next, we must address the city's obligations under section 552.301 of the Act. Section 552.301(e) of the Government Code provides that 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. You have not submitted the information responsive to the request or representative samples thereof. Thus, you have 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 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). Normally, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 182.052 of the Utilities Code, together with section 552.101 of the Government Code may constitute a compelling reason that overcomes the presumption of openness caused by a failure to comply with section 552.301.² *See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001)* (mandatory exceptions). However, because you did not submit the remaining requested information for our review, we have no basis for concluding that this information is excepted from disclosure pursuant to section 552.101 in conjunction with section 182.052 of the Utilities Code. We therefore conclude that the city must release the responsive information to the requestor pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the 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

² Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses confidentiality provisions such as section 182.052 of the Texas Utilities Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 225001

c: Ms. Tanya Davila
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