



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2005

Mr. Srin Surapanani
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

OR2005-05286

Dear Mr. Surapanani:

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# 226173.

The Texas Water Development Board (the "board") received a request for "copies of the [board's] internal analysis and discussions leading up to approval of the Dripping Springs CWSRF loan application." You claim that the requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Pursuant to section 552.301(b), a governmental body must ask for a decision from us and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). The submitted documents reflect that the initial request for information was delivered on Sunday, March 20, 2005. Therefore, for purposes of the Act, we find the board received the request on Monday, March 21, 2005. *See id.* The documents also show that the board asked the requestor to clarify his request on March 29, 2005. *See* Gov't Code § 552.222; *see also* Open Records Decision No. 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). Thus, the ten business day time period to request a decision from us under section 552.301(b) was tolled on the date that the board sought clarification of the request from the requestor. *See* Gov't Code § 552.301(b); *see also* Open Records Decision No. 663 at 5 (1999) (clarification does not

trigger a new ten business day time interval, but merely tolls the ten day deadline during the clarification or narrowing process, which resumes upon receipt of the clarification or narrowing response). You have provided documentation showing that the board received the requestor's clarification on March 29, 2005. Accordingly, we conclude that the ten business day time period for requesting a decision from our office resumed on March 30, 2005. However, the board did not request a decision from this office until April 11, 2005. Consequently, we conclude that the board failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us.

Pursuant to section 552.302 of the Government Code, 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* 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). Generally speaking, 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 552.107 is a discretionary exception intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect interests of third parties or information that is confidential by law. *See* Open Records Decision No. 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason for purposes of section 552.302 if it does not implicate third party rights); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Thus, the board's claim under section 552.107 does not provide a compelling reason for non-disclosure under section 552.302. Therefore, no portion of the submitted information may be withheld pursuant to this exception. As the board raises no other exceptions for this information, and it is not otherwise confidential by law, the board must release the submitted 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, 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 226173

Enc. Submitted documents

c: Mr. Charles O'Dell
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(w/o enclosures)