



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2005

Mr. Jose R. Guerrero
Montalvo & Ramirez
Attorneys at Law
900 N. Main
McAllen, Texas 78501

OR2005-08509

Dear Mr. Guerrero:

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# 232439.

The La Joya Water Supply Corporation (the "LJWSC"), which you represent, received a request for sixteen categories of information. You state that some responsive information has been or will be released to the requestor. You also state that there is no "public documents within the custody, control, or possession of LJSWC" responsive to item no. 10, 11, and 13 of the request.¹ You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted information concerning requested item 6, nor have you indicated that you seek to withhold any such information. Therefore, if such information existed on the date of the LJWSC's receipt of this request, we assume the LJWSC has already released it to the requestor. If the LJWSC has not released this information, then LJWSC must release it to the requestor at this time. *See Open Records*

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); *Open Records Decision Nos.* 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” Gov’t Code § 551.104(c). Such information cannot be released to a member of the public in response to an open records request.² See Open Records Decision No. 495 (1988). We agree that the requested information pertaining to certified agendas of executive sessions of LJWSC’s board of directors is not subject to disclosure. We conclude LJWSC must withhold this information pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

You claim that Exhibit B of the submitted information is excepted from disclosure under section 552.116 of the Government Code. Section 552.116 provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency. . . is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) ‘Audit’ means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) ‘Audit working paper’ includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

²As you acknowledge, LJWSC is not required to submit the certified agenda of a closed meeting to this office for review. See Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code).

Gov't Code § 552.116. You inform this office that Exhibit B are draft working papers of an audit authorized by state law and conducted by the State Auditor's Office. *See* Gov't Code §§ 321.013. Based on your representations and our review of the information, we conclude that LJSWC may withhold the information in Exhibit B from disclosure in its entirety under section 552.116.

In summary, LJSWC must withhold the responsive certified agendas of the closed meetings pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. LJSWC may also withhold Exhibit B under section 552.116 of the Government Code.

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).

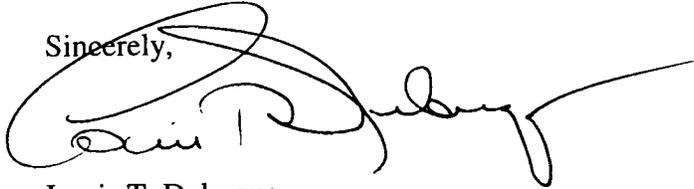
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "Louis T. Dubuque", with a long horizontal flourish extending to the right.

Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/krl

Ref: ID# 232439

Enc. Submitted documents

c: Ms. Deborah De La Fuente
The Gomez Law Firm, P. L. L. C.
P. O. Box 2004
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(w/o enclosures)