



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2007

Ms. Julie Joe
Assistant County Attorney
Travis County
P. O. Box 1748
Austin, Texas 78767

OR2007-00276

Dear Ms. Joe:

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# 268692.

The Travis County Clerk's Office (the "office") received a request for "copies of the actual electronic ballot" used in elections. You state that you have allowed the requestor to inspect a specimen ballot. However, you claim that the electronic ballot which the requestor seeks is not subject to the Act. We have considered your argument. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the office's argument that the requested information is not subject to the Act. In Open Records Decision No. 581, this office determined that certain computer information such as source codes, documentation information, and other computer programming that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information that is made public under section 552.021 of the Act. Open Records Decision No. 581 (1990) (construing predecessor statute). In reaching this decision, we reasoned that "the legislature could [not] have intended that the Open Records Act compromise the physical security of information management systems or other government property." *Id.* at 6. Upon review, we find that the instant request is seeking information which has significance other than its use as a tool for the maintenance, manipulation, or protection of public property. Accordingly, we conclude that the requested information is public information as defined by section 552.002, and is subject to disclosure under the Act.

Next, we address your assertion that the Act does not require you "to answer questions or perform any legal research." We agree that the Act does not require a governmental body

to answer general questions, perform legal research, or create new information in response to a request for information. However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989). In this instance, we find that the requestor's inquiries are sufficiently specific to enable the office to identify any responsive information that is within the office's possession or control. *See* Open Records Decision No. 483 at 2 (1987) (stating that the Act requires no particular request form or "magic words").

Pursuant to section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the 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 inform us that the office received this request on October 16, 2006. Thus, the fifteen-day deadline to comply with section 552.301(e) was November 6, 2006. As of this date, you have not submitted to this office a copy or representative sample of the information requested. Consequently, we find that the office failed to comply with the procedural requirements of section 552.301.

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 a compelling reason exists 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 to withhold information 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). Although you request that this office determine that the requested information is not subject to the Act, by failing to submit any information for our review, we have no basis for finding that the requested information does not come within the scope of the Act. Thus, we have no choice but to order you to release the responsive information in accordance with section 552.302 of the Government Code. 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

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).

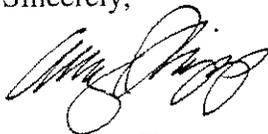
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/krl

Ref: ID# 268692

Enc. Submitted documents

c: Mr. Carl Haddick
P. O. Box 1586
Mexia, Texas 76667
(w/o enclosures)