



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 12, 2007

Mr. James R. Evans, Jr.  
Attorney at Law  
Hargrove & Evans, L.L.P.  
4425 Mopac South, Building 3, Suite 400  
Austin, Texas 78735

OR2007-01788

Dear Mr. Evans:

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# 275180.

The Lavaca County Appraisal District (the "district"), which you represent, received a request for attorney billing records from May to September of 2006, as well as specified district contracts. You state that the district previously requested a ruling from this office, in response to which this office issued Open Records Letter No. 2006-15027 (2006). You state that the district "recently located two pieces of information that should have been covered by our earlier request but were not." You claim that the information at issue is *excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503*. We have considered the exception you claim and reviewed the submitted information.

We note that section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). You inform us that the district received the request for information on October 26, 2006. Therefore, the district was required to submit

the information seeks to withhold or representative samples thereof no later than November 16, 2006. However, as of this date, the district has not submitted the information at issue. Thus, we find that the district failed to meet the deadline prescribed by section 552.301(e).

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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See Open Records Decision No. 150 at 2* (1977). Although you raise section 552.107 of the Government Code and rule 503 of the Texas Rules of Evidence for the information at issue, this exception and this privilege are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See Open Records Decision Nos. 676 at 12* (2002) (attorney-client privilege under section 552.107 or rule 503 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party), 522 at 4 (1989) (discretionary exceptions in general). Accordingly, the district may not withhold the information pursuant to this section or rule. As you raise no other exceptions to disclosure, the submitted information must be released to the requestor.

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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/eb

Ref: ID# 275180

Enc. Submitted documents

c: Mr. Robert P. Jackson  
P.O. Box 1451  
Shiner, Texas 77984  
(w/o enclosures)