



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 6, 2007

Mr. Bret L. Strong  
The Strong Firm  
Waterway Plaza Two  
10001 Woodloch Forest Drive, Suite 475  
The Woodlands, Texas 77380

OR2007-07094

Dear Mr. Strong:

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# 280371.

The Woodlands Community Association (the "association"), which you represent, received a request for all information regarding the discussion of a franchise fee during a particular board meeting. You state that some responsive information has been released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code and protected under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5.<sup>1</sup> We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

We must address the association's obligations under the Act. Pursuant to sections 552.301(a) and (b) of the Government Code, a governmental body that receives a written request for information that it wishes to withhold from public disclosure must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See Gov't Code § 552.301(a), (b)*. Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written

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<sup>1</sup>You also raise section 552.022; however, this section is not an exception to disclosure. Rather section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See Gov't Code § 552.022*.

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. *Id.* § 552.301(e)(1)(A)-(D)(2). You inform us that the association received this request for information on February 22, 2007. However, you did not request a ruling or submit the information at issue until March 30, 2007. Consequently, we find the association 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 id.* § 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 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 sections 552.107 and 552.111 of the Government Code and rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure for this information, these exceptions and these rules 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. 677 at 10 (2002) (claim of attorney work product privilege under section 552.111 or Texas Rule of Civil Procedure 192.5 does not provide compelling reason for purposes of section 552.302 if it does not implicate third-party rights), 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), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (governmental body may waive sections 552.107 and 552.111). In this instance, you do not assert that any third-party interests are implicated. Accordingly, the association may not withhold the submitted information on the bases of sections 552.107 and 552.111 of the Government Code and rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure. Because you do not raise any other exceptions to disclosure, the submitted information must be released.

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).

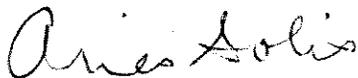
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Aries Solis  
Assistant Attorney General  
Open Records Division

AS/eeg

Ref: ID# 280371

Enc. Submitted documents

c: Mr. Foster McNair  
135 East Mistybreeze Circle  
The Woodlands, Texas 77381  
(w/o enclosures)