



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2007

Mr. Lloyd L. Davis  
Acting President  
Kinney Groundwater Conservation District  
P.O. Box 369  
Brackettville, Texas 78832-0369

OR2007-07391

Dear Mr. Davis:

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# 280837.

The Kinney County Groundwater Conservation District (the "district") received two requests for several categories of information concerning, among other things, district business, district meetings, district board members, and district employees. You state that the district has made some information available to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.103, 552.107, 552.111, and 552.116 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. We have considered your arguments and reviewed the submitted representative samples of information.<sup>1</sup> We have also 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 note that some of the requested information may be subject to a previous request for information, in response to which this office issued Open Records Letter No. 2007-05260

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2007). Accordingly, to the extent information responsive to the current request is identical to information previously requested and ruled upon by this office, we conclude that, as we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the district must continue to rely on that ruling as a previous determination and withhold or release that information in accordance with Open Records Letter No. 2007-05260. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body inform this office which exceptions apply to a request for information within ten business days of receiving the request. *See* Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records 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. *See* id. § 552.301(e). With regard to the first request, you state that the district received the request on March 13, 2007. However, you failed to raise Texas Rule of Civil Procedure 192.5 and sections 552.103 and 552.111 of the Government Code within ten business-days as required by section 552.301(b) of the Government Code. Additionally, you failed to submit arguments in support of your claimed exceptions, or a copy of the request for information, to this office within the fifteen-business-day period prescribed by section 552.301(e). With regard to the second request, you state that the district received the request on March 15, 2007. However, you did not request a ruling from our office within ten business days as required by section 552.301(b). Thus, the district failed to comply with the procedural requirements mandated by section 552.301.<sup>2</sup>

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); Open Records Decision No. 319 (1982). A compelling

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<sup>2</sup>We note that response deadlines have been calculated based upon the district's actual business days which, according to the district, end at 5:00 p.m.

reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you raise sections 552.103, 552.107, 552.111 and 552.116 of the Government Code, Texas Rule of Civil Procedure 192.5, and Texas Rule of Evidence 503, these exceptions and 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 Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under section 552.111 or rule 192.5 is not compelling reason to withhold information under section 552.302 ), 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 663 at 5 (1999) (governmental body may waive sections 552.103, 552.107, and 552.111), 575 (1990), 574 (1990), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). In failing to comply with section 552.301, the district has waived its claims under sections 552.103, 552.107, 552.111 and 552.116 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5. Therefore, none of the submitted information may be withheld under those provisions. As the district raises no other exceptions to disclosure, the requested 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,



Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/mcf

Ref: ID# 280837

Enc: Submitted documents

c: Ms. Darlene Shahan  
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(w/o enclosures)