



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 15, 2007

Ms. Lisa Morris  
Public Information and Records Manager  
The Woodland Community Association, Inc.  
2201 Lake Woodlands Drive  
The Woodlands, Texas 77380-1118

OR2007-07571

Dear Ms. Morris:

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 #281456.

The Woodlands Community Association (the "WCA") received a request for any information pertaining to the franchise fee issue provided to WCA board members prior to and during an executive session of the WCA board meeting held on March 20, 2007. You claim that the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the *Government Code*.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address your obligations under section 552.301 of the *Government Code*. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You state that the department received the present request for information on March 26, 2007. However, you did not request a decision from this office until April 10, 2007. Consequently, the WCA failed to comply with the ten business day deadline in section 552.301(b) of the *Government Code*.

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<sup>1</sup>Although the WCA raises section 552.022 of the *Government Code*, that provision 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.

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) (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). Sections 552.107 and 552.111 are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived). In failing to comply with section 552.301, the WCA has waived its claim under sections 552.107 and 552.111, and the WCA may not withhold any of the submitted information under those exceptions. Accordingly, the 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,

A handwritten signature in black ink, appearing to read "Reg Hargrove", with a long, sweeping horizontal stroke extending to the right.

Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/jb

Ref: ID# 281456

Enc. Submitted documents

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