



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2009

Mr. Anthony S. Corbett
Freeman & Corbett
8500 Bluffstone Cove, Suite B-104
Austin, Texas 78759

OR2009-14890A

Dear Mr. Corbett:

This office issued Open Records Letter No. 2009-14890 (2009) on October 21, 2009. Based upon comments recently submitted to this office by the requestor, we have examined this ruling and determined that an error was made in its issuance. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on October 21, 2009. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 369859.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received a request for information pertaining to a specified letter sent to the requestor addressing complaints against him. You claim that the requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must address the district's procedural obligations under section 552.301 of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body 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). Additionally, under section 552.301(e), a

governmental body receiving an open records request for information it wishes to withhold pursuant to one of the exceptions to public disclosure 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. *Id.* § 552.301(e).

In this instance you state the district received the request for information on September 30, 2009. However, the requestor submitted a prior request dated September 4, 2009 to the district requesting “copies of all documents related to all [complaints against the requestor].” The district responded to this request on September 9, 2009 stating the complaints were verbal and thus there were no documents responsive to this request. However, we note the requestor asked for “all documents related” to the complaints, not just the complaints. Thus, the September 4th request encompassed information responsive to the September 30th request for information supporting the letter sent to the requestor addressing the complaints against him. Because the district did not request a ruling from this office to withhold information responsive to the first request, its subsequent submission of said information in response to the September 30th request for information is untimely. Accordingly, we find the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code. *See id.* § 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, 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). By failing to comply with the procedural requirements of the Act, the district waived its claim under section 552.107 of the Government Code, which is a discretionary exception to disclosure. *See* Open Records Decision Nos. 676 at 11-12 (2002) (attorney-client privilege under section 552.107 and Texas Rule of Evidence 503 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for a decision resulted in waiver of discretionary exceptions), 630 at 4-5 (1994) (governmental body may waive statutory predecessor to section 552.107). Therefore, the district may not withhold any of the requested information under section 552.107 of the Government Code and it must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 369859

Enc. Submitted documents

cc: Requestor
(w/o enclosures)