



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

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Mr. Wesley G. Ritchie
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Attorneys for Creedmoor Maha Water Supply Corporation
2112 Rio Grande Street
Austin, Texas 78705-5526

OR2009-18436

Dear Mr. Ritchie:

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# 365916.

The Creedmoor Maha Water Supply Corporation (the "corporation"), which you represent, received a request for 21 categories of information pertaining to specified litigation. You inform us you have released some information to the requestor. You assert that the requested inventory of existing water improvements, copies of decertified appraisals or valuations, and correspondence between the corporation and the United States Department of Agriculture Rural Development Office regarding decertified water service areas do not exist. You state that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address your assertion that category 17 of the instant request is vague and ambiguous. We note that administrative inconvenience in responding to a request for information is not grounds for refusing to comply with a request under the Act. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). A governmental body is required to make a good-faith effort to relate a request to responsive information that it holds or to which it has access. *See* Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). Moreover, if what information is requested is unclear to a governmental body, a governmental body may ask the requestor to clarify the request or discuss with the requestor how the scope of the request might be narrowed. *See* Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (addressing circumstances under which governmental body's communications with requestor to clarify or narrow request for information toll its ten-business-day deadline to request decision under Gov't Code § 552.301(b)). You do not inform us that the corporation has asked the requestor to clarify or narrow the scope of this category of the request. Therefore, to the extent any information responsive to this category of the request exists, you must release it unless it has been

demonstrated to come within an exception to public disclosure. *See* Gov't Code §§ 552.006, .221, .301, .302; Open Records Decision No. 664 (2000).

Section 552.301 of the Government Code prescribes the procedures that must be followed in asking this office to decide whether information is excepted from disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). The corporation received the request for information on October 6, 2009. However, as of the date of this letter, you have not submitted a copy or representative sample of the information requested. Thus, we find the corporation failed to comply with the procedural requirements of section 552.301 regarding category 17 of the instant request.

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 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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You assert that category 17 is “worded so as to include privileged communications and attorney work product.” You further claim category 17 is similar to “catch-all” discovery requests in litigation. Thus we understand you to assert sections 552.103, 552.107, and 552.111 of the Government Code for the information responsive to category 17. These sections, which encompass the litigation exception, attorney-client privilege, and attorney work-product privilege respectively, are discretionary in nature; they serve only to protect a governmental body's interests and may be waived. *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); *see also* Open Records Decision Nos. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 677 at 10 (2002) (attorney work-product privilege under section 552.111 is not compelling reason to withhold information under section 552.302), 665 at 2 n.5 (2000) (discretionary exceptions in general). As such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. In failing to comply with section 552.301 regarding category 17, the corporation has waived any claim under sections 552.103, 552.107, and 552.111 for this information. Accordingly, the corporation may not withhold information responsive to category 17 from release under those sections, but instead must release it to the requestor.

We next address your assertion that the timely submitted information may be withheld under section 552.103 of the Government Code. We note the submitted information consists

entirely of attorney's fee bills subject to section 552.022(a)(16) of the Government Code. Section 552.022(a)(16) provides for required public disclosure of "information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege," unless the information is expressly confidential under "other law." Gov't Code § 552.022(a)(16). Although you seek to withhold the submitted information under section 552.103, that section is discretionary and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d at 475-76, Open Records Decision No. 665 at 2 n.5 (2000). Thus, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022(a)(16), and the corporation may not withhold any of the submitted information under that section. As the corporation raises no further exceptions to disclosure, the submitted information 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,



James McGuire
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 365916

Enc. Submitted documents

c: Requestor
(w/o enclosures)