



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2014

Ms. Maranatha Lingerfelt
Counsel for Becker-Jiba Water Supply Corporation
The Gent Law Firm, PLLC
113 West Mulberry Street
Kaufman, Texas 75142

OR2014-01030

Dear Ms. Lingerfelt:

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# 511518.

The Becker-Jiba Water Supply Corporation (the "corporation"), which you represent, received two requests from the same requestor, a former employee, for (1) the requestor's personnel file; (2) all correspondence sent to the requestor on behalf of the corporation regarding the requestor's employment from October 1, 2009 through October 18, 2013; (3) all recordings made of the requestor on behalf of the corporation regarding the requestor's employment from October 1, 2009 through October 18, 2013; (4) the corporation's board meeting agendas from October 1, 2011 through October 1, 2013; (5) the corporation's board meeting minutes from October 1, 2011 through October 1, 2013; (6) the corporation's board meeting executive session agendas from October 1, 2011 through October 1, 2013; and (7) the corporation's board meeting recordings from October 1, 2011 through October 1, 2013.¹ You state you have released most of the requested information. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim.

¹Since you did not submit the requestor's written request for information, we take our description from your brief to this office.

²Although you do not cite to section 552.101 of the Government Code in your brief to this office, we understand you to raise section 552.101 based on the substance of your arguments.

Initially, we must address the corporation's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. 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) 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. Gov't Code § 552.301(e). In this instance, you state the department received the request for information on or about October 18, 2013. As of the date of this letter, you have not submitted for our review a copy of the written request for information. Consequently, we find the corporation failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with 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; *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, 381-82 (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); *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). Because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the requested information at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 551.104 of the Open Meetings Act, chapter 551 of the Government Code. Section 551.104 provides in part that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). We note the corporation is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101). Such information cannot be released to a member of the public in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See* Gov't Code § 551.146(a)-(b); *see also* ORD 495 at 4. You inform us the

remaining requested information consists of a certified agenda of a closed meeting of the corporation's board. Based on your representation, we conclude the corporation must withhold the requested agenda under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/bhf

Ref: ID# 511518

Enc. Submitted documents

c: Requestor