



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 8, 2015

Ms. Whitney Vestal Ables
Counsel for Pecan Grove Municipal Utility District
Allen Boone Humphries Robinson, L.L.P.
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

OR2015-25702

Dear Ms. Ables:

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# 589887.

The Pecan Grove Municipal Utility District (the "district"), which you represent, received a request for information pertaining to specified questionnaires. You state the district released some information. You state the district does not have information responsive to a portion of the request.¹ You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim.

We must address the district's 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 is required to submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons why the claimed 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

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

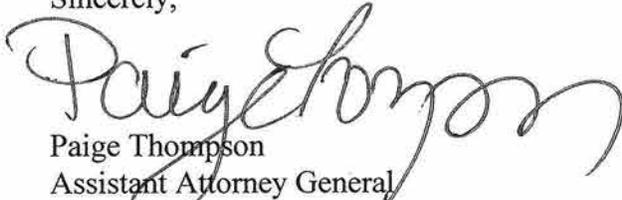
governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The district received the request for information on September 16, 2015. The district sought clarification from the requestor. *See id.* § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). The requestor clarified his request on September 17, 18, and 22, 2015. As of the date of this letter, the district has not submitted for our review a copy or representative sample of the information requested. Accordingly, we find the district 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* Gov't Code § 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). The district claims section 552.116 of the Government Code for the remaining requested information. However, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, no portion of the remaining requested information may be withheld under section 552.116 of the Government Code. Although the district also raises section 552.101 of the Government Code, a mandatory exception to disclosure, because you have not submitted the remaining requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the remaining requested information released pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 589887

c: Requestor