



April 26, 2000

Mr. Edward W. Dunbar
Dunbar, Armendariz, Crowley & Hegeman
4726 Transmountain Drive
El Paso, Texas 79924

OR2000-1628

Dear Mr. Dunbar:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 135267.

The El Paso Community College District ("EPCC"), which you represent, received requests for information relating to EPCC's accounts payable files, attorney fee bills, and employee records. You argue that the information is excepted from public disclosure pursuant to Government Code section 552.103. We have considered your argument and reviewed the submitted information.

We first consider the information related to the accounts payable files. The requestor has asked to survey "selected records in the accounts payable files of paid invoices from the current fiscal year," as well as "the original canceled checks, including endorsements on the reverse side." You have submitted 5 pages of a 682 page accounts payable list as a representative sample of the requested information.¹

Section 552.103 does not protect from disclosure information subject to mandatory public

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

release pursuant to section 552.022 of the Government Code. Section 552.022 provides as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Section 552.103 is not other law that makes the requested information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.-Dallas 1999, no pet.) (litigation exception discretionary; governmental body may waive section 552.103 exception). The information at issue is clearly information in an account or voucher that relates to the receipt or expenditure of public funds. Therefore, EPCC must disclose the requested information relating to canceled checks and the accounts payable files.

Next, the requestor seeks all records showing why a named employee was transferred to another position and a list of workers in a specific department “who were paid by expenditures during calendar 1998 to the janitorial services contractor, but who did not directly perform work as part of the janitorial contract crew.” The requestor has also asked for invoices submitted by a specified attorney for legal services rendered to EPCC during a specified time period. Again, you argue this information is excepted from public disclosure pursuant to section 552.103. Although you have submitted information to show how section 552.103 applies to the requested information, you have not submitted copies or representative samples of the specific information requested. Pursuant to section 552.301(e)(4), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy or representative samples of the specific information requested, labeled to indicate which exceptions apply to which parts of the documents.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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

Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown such a compelling interest to overcome the presumption that the information at issue is public. Accordingly, you must release the requested information. We caution that the distribution of confidential information constitutes a criminal offense. *See* Gov't Code § 552.352.

This letter ruling is limited to the particular records at issue in this request and 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 cursive script that reads "Julie Reagan Watson".

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/cwt

Ref: ID# 135267

Encl. Submitted documents

cc: Mr. Mathew Babick
P. O. Box 9776
El Paso, Texas 79995
(w/o enclosures)