



October 18, 2000

Mr. Anthony S. Corbett
Winstead Sechrest & Minick
100 Congress Avenue, Suite 800
Austin, Texas 78701

OR2000-4045

Dear Mr. Corbett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141008.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received a request for a particular memorandum. You claim that the requested information is excepted from disclosure under section 552.107 of the Government Code. You did not submit the responsive information with this request.

The requestor seeks the memorandum referenced in a communication electronically transmitted from Tony Corbett to Jimmy Griffith on June 9, 2000. You assert that the requested memorandum is also an electronically transmitted communication. You contend that this memorandum was deleted from all electronic storage without a paper copy being produced. The Public Information Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to an open records request. Open Records Decision No. 445 (1986). Therefore, if you do not possess the requested information or have access to this information you need not further respond to this request.

However, you indicate that this item "may have been sent" to this office in response to an earlier request for information. Your earlier request for decision was assigned ID # 139235. From our review of the materials submitted with that request, and the comments submitted with the current request, we are unable to identify the information responsive to the current request.

The Public Information Act requires a governmental body that wishes to withhold requested information to provide to this office a copy of the specific information requested, or a representative sample thereof, labeled to indicate which exceptions apply to which parts of the information, within fifteen business days of its receipt of the request for information.

Gov't Code § 552.301(e). If the governmental body does not comply with this requirement, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. Such a compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). We conclude that you have not complied with section 552.301 and that there is no demonstration of a compelling reason to withhold the responsive information. Therefore, if the responsive information exists, in any form, it must be released.

This letter ruling is limited to the particular records 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 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).

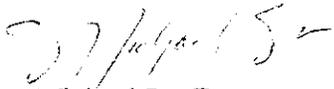
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 141008

cc: Mr. John C. McLemore
8400 Cornerwood Drive
Austin, Texas 78717