OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

July 16, 2001

Mr. George Thompson
Attorney at Law
P.O. Box 65150
Lubbock, Texas 79464

OR2001-3043

Dear Mr. Thompson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149444.

The Emerald Underground Water Conservation District (the "district"), which you represent, received a request for eight categories of information concerning the district's participation in the West Texas Rural Counties Association ("WTRCA"), an insurance pool. Specifically, the requestor seeks:

> (1) Copies of all financial statements and related documents in the possession of the Crockett County Government covering the period from January 1, 1999 to the present. This request includes, but is not limited to, documents addressing your entity's: (a) revenues and expenditures; (b) assets and debts; (c) budget information; and (d) fiscal statements (audited and unaudited);
>
> (2) Copies of all contracts, agreements and understandings between Crockett County Government and the [WTRCA];
>
> (3) Copies of all documents and communications, written and electronic, between the Crockett County Government and the [WTRCA] concerning the payment of the creditors of the [WTRCA] in the period of time between October 1, 1998 and the date of your response to this request;

(4) Copies of all communications and documents, written and electronic, in the possession of the Crockett County Government which refer to, mention or relate to the [WTRCA];

(5) Copies of all documents and communications, written and electronic, in the possession of the Crockett County Government which refer to, mention or relate to [Eckerd Health Services ("EHS")] in the period of time between April 1, 1996 to the date of your response to this request;

(6) Copies of the charter, charter amendments, by-laws, by-law amendments, minutes and resolutions of the [WTRCA];

(7) Copies of all reports, correspondence or communications between the members of [the WTRCA] and the [WTRCA], in the period of time between April 1, 1996 to the date of your response to this request; and

(8) Copies of the Interlocal Participation Agreement (Employee Benefit Pool) and all amendments thereto between the [WTRCA] and Crockett County.

You state most of the information will be furnished to the requestor, but that the remainder of the requested information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim.

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 a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the specific information requested or representative samples, 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 and must be released. 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). This office has long held that a compelling reason to withhold information exists, sufficient to overcome the section 552.302 presumption of openness, where the information at issue is made confidential by another source of law or affects third party interests. *See* Open Records Decision Nos. 26 (1974), 150 (1977). However, because you have not submitted any portion of the requested information, we have no basis for finding it confidential. Thus, we have no choice but to order the information released per section 552.302. If you believe the

information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below. We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352.

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).

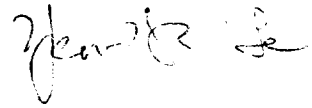
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Hadassah Schloss at 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref.: ID# 149444

cc: Mr. Peter Franklin, III
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