



November 30, 2001

Mr. Joseph T. Longoria
Perdue, Brandon, Fielder, Collins & Mott, LLP
1235 North Loop West, Suite 600
Houston, Texas 77008

OR2001-5561

Dear Mr. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155506.

The El Paso Central Appraisal District (the "appraisal district") received a request for a "copy of the report prepared by Mr. Jones in the Airline International, et al v. El Paso Central Appraisal District case, which was produced to Plaintiffs' counsel in that matter." You claim that the requested information is excepted from disclosure under sections 552.103, 552.107 and 552.111 of the Government Code. You have submitted to this office Plaintiff's Petition for Review of Appraisal Review Order in two pending appraisal district cases, Defendants Designation of Expert Witnesses in two pending appraisal district cases, and a sample of an appraisal district discovery response in one of the cases. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(e), within fifteen business days of receiving an open records request, a governmental body is required to submit to this office, among other things, 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 submit to this office a copy of the requested information.

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). The presumption of openness can be overcome by a demonstration that the information is deemed confidential by some other source of law or that third-party interest are at stake. *See Open Records Decision No. 150 (1977)*. The applicability of the exceptions you raise does not provide a compelling reason to overcome the presumption of openness. *See Open Records Decision Nos. 630 (1994), 473 (1987)*. In addition, without a review of the information, we have no basis for concluding that it is confidential. Consequently, 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 to the requestor. 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 Texas Building and Procurement 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 155506

Enc. Submitted documents

c: Mr. Richard L. Bischoff
Attorney at Law
P.O. Box 5325
El Paso, Texas 79954
(w/o enclosures)