



January 30, 2002

Mr. George C. Kraehe  
Willette & Guerra, LLP  
3505 Boca Chica Boulevard, Suite 460  
Brownsville, Texas 78521

OR2002-0452

Dear Mr. Kraehe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158113.

The Lower Rio Grande Valley Development Council (the "council"), which you represent, received a request for information. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. In addition, you assert that, as the recipient of the request for information, you are not subject to the Public Information Act (the "Act") because you are not a governmental entity. We have considered your arguments and reviewed the submitted information. We have also considered the comments of the requestor. *See* Gov't Code § 552.304.

First, with regard to your argument that you are not a governmental body subject to the Act, we note that section 552.301(a) sets forth a governmental body's duties under chapter 552 of the Government Code:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

The requestor in this case asserts in a letter to this office received November 26, 2001 that you informed him that any requests made by the requestor to the council should be directed to you, and that the requestor should not have any direct contact with the council. Therefore, we find that, because the request was submitted to you as a representative of the council, and because you apparently represented to the requestor that you have authority to receive public information requests on behalf of the council, the instant request subjects the council to the requirements of chapter 552 of the Government Code. *See* Open Records Decision Nos 497 (1988) (Act does not require that member of public actually name chief administrative officer of governmental body in order to make valid request for information under Act; request is valid so long as it reasonably can be identified as request for public records; whether particular request reasonably can be identified as such is fact question that must be resolved on case-by-case basis), 44 (1974) (where request has been directed to responsible person in position of authority, governmental body cannot ignore request simply because it may not have been directed to legal custodian of records); *see also* Open Records Decision No. 499 (1988) (noting that agent-principal relationship existing between attorney and client is relationship imposed by law, rather than by contract, and that one purpose for legal imposition of certain agency principles is to protect third parties who must deal with attorneys).

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) general written comments stating the reasons why the stated 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 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. You did not, however, submit to this office a copy of the written request for 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). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). In arguing that the information at issue is excepted from disclosure under section 552.103 in this case, you have not shown such a compelling interest to overcome the presumption that the information is public. *See* Open Records Decision Nos. 542 (1990) ("litigation exception" does not implicate third party rights and therefore is waivable by a governmental body). Accordingly, you must release the requested information.

We note that the information to be released contains the requestor's social security number. A social security number is excepted from required public disclosure under section 552.101 of the Act<sup>1</sup> in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). However, section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interest. Therefore, section 552.023 provides the requestor a special right of access to his social security number.<sup>2</sup>

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.

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<sup>1</sup>Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

<sup>2</sup>Because the information to be released under section 552.023 may be confidential with respect to the general public, if the council receives a future request for this information from an individual other than the requestor or her authorized representative, the council should again seek our decision.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 158113

Enc. Submitted documents

c: Mr. Dionel De La Cruz  
27 Rio Fence Road  
Rio Grande City, Texas 78582  
(w/o enclosures)