



June 7, 2002

Mr. Richard C. Mosty
Keith, Weber & Mosty, PLLC
222 Sidney Baker South, Suite 400
Kerrville, Texas 78028

OR2002-3083

Dear Mr. Mosty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164028.

The Upper Guadalupe River Authority (the “authority”), which you represent, received a request for ten categories of information. You question whether some of the requested information is subject to the Public Information Act (the “Act”). You also claim that some of the information is excepted from disclosure by sections 552.102, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim.

Initially, we address your assertion that portions of the requested information are not subject to the Act. The Act applies to “public information,” which is defined under section 552.002 as:

information that is collected, assembled, or *maintained* under a law or ordinance or *in connection with the transaction of official business*:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov’t Code § 552.002 (emphasis added); *see also id.* § 552.021. “Governmental body” is defined by the Act to include “a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state

government and that is directed by one or more elected or appointed members.” *Id.* § 552.003(1)(A)(i). The fact that a request for information might be more appropriately directed to another governmental body does not mean that the information may be withheld by a governmental body to which a request is properly directed. Attorney General Opinion JM-266 at 3 (1984).

You claim that portions of the requested information belong to Kerr County and should be requested from the county. However, the authority comes within the definition of a governmental body for purposes of the Act. *See* Water Code §§ 9.001-9.017. In addition, it appears that the requested information is maintained by the authority in connection with the transaction of official business. Accordingly, the requested information is subject to disclosure by the authority and may not be withheld simply because the authority believes the request would be more appropriately directed to Kerr County.

Having established that the requested information is subject to disclosure under the Act, we turn to the exceptions you claim. We note that you have not submitted any information responsive to this request. Pursuant to section 552.301(e)(1) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) 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. Gov’t Code § 552.301(e)(1)(A)-(D). We therefore conclude that you have failed to fully comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov’t Code § 552.302; *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); Open Records Decision No. 319 (1982). A compelling reason exists where a third party’s interests are implicated or another source of law makes the information confidential. *See* Open Records Decision No. 150 (1977). Sections 552.103, 552.107, and 552.111 are all discretionary exceptions, which do not provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege), No. 473 at 2 (1987) (city’s failure to meet 10-day deadline waived protections of predecessors to sections 552.103 and 552.111); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Furthermore, as you have not submitted any responsive information, we have no basis for determining whether it is confidential by law. Thus, we have no choice but to order the requested information released pursuant to 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. *See* Gov't Code § 552.352.

In summary, the authority has not established that any of the requested information may be withheld. Therefore, 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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 black ink, appearing to read "Denis C. McElroy". The signature is written in a cursive, somewhat stylized font.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 164028

c: Mr. David Edgar Nicholson
HC1 Box 156
Hunt, Texas 78024