



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 12, 2003

Mr. Frank Stenger-Castro
General Counsel
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449

OR2003-4062

Dear Mr. Stenger-Castro:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182675.

The San Antonio Water System ("SAWS") received a request for the following information:

1. Any documents or correspondence (including, without limitation, letters, permits, certificates, contracts, Board resolutions, Board memorandums) related to potable water credits, capacity allocations or assignments of capacity related to the Woodridge Village Developments or other developments within [a specified area as identified on an attached location map]; and
2. Any documents or correspondence (including, without limitation, letters, permits, certificates, contracts, Board resolutions, Board memorandums) related to sewer service credits, capacity allocations or assignments of capacity related to the Woodridge Village Developments or other developments within [the specified area].

The submitted documents reflect that you contacted the requestor seeking clarification of the geographic area covered by the request. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body). The requestor's response, which you have

submitted, confirms that the requestor is asking for information relating to the area in the vicinity of the property known as Woodridge Village Unit 8B, within the boundaries represented on the location map provided by the requestor. The requestor states that the request is not restricted to the area within the boundaries of the Woodridge Village Unit 8B property itself. You state that some responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must address the obligations of SAWS under section 552.301 of the Government Code. Sections 552.301(a) and (b) provide:

(a) 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 [Public Information Act's] exceptions . . . 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.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request.

Under section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the 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 state that SAWS received the present request for information on March 13, 2003. The submitted documents reflect that you provided some responsive information to the requestor, and sought clarification of the area outlined in the request, on March 21, 2003. *See* Gov't Code § 552.222. Thus, the ten-business-day deadline for requesting a decision from this office was tolled on March 21, 2003. *See* Open Records Decision No. 663 at 5 (1999) (providing that ten-business-day period is tolled during clarification process). You state, and provide documentation showing, that SAWS received the requestor's response on March 26, 2003. However, the requestor's response to your request for clarification did not result in an additional ten days for SAWS to request a decision from this office. *Id.* Rather, the ten-business-day period resumed on March 26, 2003. *See id.* at 5 (providing that the ten-business-day period resumes upon the governmental body's receipt of the requestor's

clarification, on the day that the clarification is received). Consequently, SAWS was required to submit its request for a decision from this office no later than March 31, 2003, and was required to submit the information required under section 552.301(e) no later than April 7, 2003. You submitted and we received your request for a decision on April 9, 2003. We received the information required under section 552.301(e) on April 17, 2003. Consequently, we determine that SAWS failed to request a decision within the ten-business-day deadline mandated under section 552.301(b) of the Government Code, and failed to submit the information required under section 552.301(e) within the fifteen-business-day deadline.

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 pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See Open Records Decision No. 630 (1994)*. However, you have not demonstrated a compelling reason to withhold the submitted information pursuant to the attorney-client privilege. *See Open Records Decision Nos. 676 at 12 (2002)* (compelling reason may be demonstrated for attorney-client privileged communications if it is shown that the release of the information would harm a third party), 630 at 4-5 (1994) (governmental body may waive statutory predecessor to section 552.107). Furthermore, section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived by the governmental body. Thus, section 552.103 does not demonstrate a compelling reason to withhold information from the public. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also Open Records Decision No. 665 at 2 n.5 (2000)* (discretionary exceptions generally). As you have raised no other exceptions to disclosure, we conclude that SAWS must release the submitted information to the requestor.

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 Dep't of Pub. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 182675

Enc: Submitted documents

c: Mr. Will C. Jones, IV
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(w/o enclosures)