ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2003

Mr. Adolph D. Jacobson
The Jacobson Law Firm, P.C.
6391 De Zavala Road, Suite 201
San Antonio, Texas 78249-2145

OR2003-9083

Dear Mr. Jacobson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193341.

The City of Fair Oaks Ranch (the "city") received a request for a copy of a map indicating the location of all of the city's water wells and each well's average daily pumping capacity. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.113 of the Government Code.[1]

The Public Information Act imposes a duty on governmental bodies seeking an open records decision to submit the following information within fifteen business days of receiving the written 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

[1]You state that the city received this request for information via electronic mail. You explain that you denied this request and provided the requestor with a blank copy of the city's request form. It appears from your brief that the basis for your denial was that the e-mailed request was unsigned. Please note that a governmental body may not deny a request that is sent by facsimile or electronic mail as long as that request is addressed to the officer for public information or that officer's designee. *See* Gov't Code § 552.301(c). Furthermore, a governmental body may not require a requestor to use an "official" form or to sign the written request. Should you have additional questions regarding your responsibilities under the Public Information Act, we encourage you to consult the Office of the Attorney General Website at www.oag.state.tx.us or contact the Open Government Hotline at 1-877-OPENTEX (673-6839).

representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You did not submit arguments explaining why your claimed exceptions apply.

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). Since you failed to submit any arguments, we have no basis for determining that any of the submitted information is excepted from disclosure. Accordingly, the requested information must be released. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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).

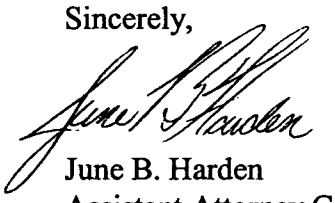
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 193341

Enc: Submitted documents

c: Mr. Jim Akin
29340 No Le Hace Drive
Fair Oaks Ranch, Texas 78015
(w/o enclosures)