



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 23, 2004

The Honorable K.H. Schneider  
Bandera County Attorney  
P.O. Box 656  
Bandera, Texas 78003

OR2004-0528

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 195031.

Bandera County Judge Richard Evans (the "county judge"), whom you represent, received a request for the following information relating to Bandera County subdivisions: 1) a copy of regulations applicable to subdivisions; 2) all recommendations provided by Doucet & Associates, a Bandera County consultant; 3) a list of individuals serving on the county's subdivision review committee; and 4) correspondence and other documentation relating to subdivision guidelines and standards. We note that you did not request a decision from this office with respect to information responsive to parts 1 and 3 of the request, nor have you suggested that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent that information responsive to these aspects of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302. You state that the co-chairman of the subdivision committee was instructed to locate information in her possession that is responsive to part 4 of the request for release to the requestor; you indicate that the county judge will disclose any information that is located.<sup>1</sup> With respect to information responsive to part 2 of the request,

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<sup>1</sup>We note that a governmental entity has an obligation to make a good faith effort to locate requested records. See Open Records Decision No. 561 at 8 (1990); see also Open Records Decision No. 362 at 2 (1983) (no obligation to supply information which does not exist.)

we understand you to assert that the information is excepted from disclosure under section 552.111 of the Government Code.<sup>2</sup> Moreover, you claim that this information may be withheld pursuant to a previous open records letter ruling issued by this office.

We note that the open records letter ruling which you cite may not be treated as a “previous determination” to support withholding the requested information. What constitutes a previous determination is narrow in scope, and governmental bodies are cautioned against treating most published attorney general decisions as previous determinations to avoid the requirements of section 552.301. The type of previous determination upon which you rely requires that 1) the records or information at issue are precisely the same records or information that were previously submitted to this office; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001). However, the ruling on which you rely was addressed to a different governmental body and concerned different records and a different set of facts. Consequently, the information at issue may not be withheld on the basis of the previous ruling from our office.

We must now address the county judge’s obligations under section 552.301 of the Government Code. Pursuant to 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 have not submitted to this office a copy of the specific information requested or representative sample.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption

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<sup>2</sup>Section 552.111 provides that “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from [required public disclosure].” This section thereby encompasses the deliberative process privilege. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000). The deliberative process privilege, as incorporated into the act by section 552.111, protects from disclosure interagency and intra-agency communications consisting of advice, opinion, or recommendations on policymaking matters of a governmental body. *See id.*; Open Records Decision No. 615 at 5 (1993).

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 section 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). Section 552.111 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived by the governmental body. Thus, section 552.111 does not demonstrate a compelling reason to withhold information from the public. *See* Open Records Decision No. 473 (1987) (governmental body may waive statutory predecessor to section 552.111); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions generally). The information at issue must therefore be released 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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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 ten calendar days of the date of this ruling.

Sincerely,



Steven W. Bartels  
Assistant Attorney General  
Open Records Division

SWB/seg

Ref: ID# 195031

c: Mr. Jim Hannah  
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Bandera, Texas 78003