

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 20, 2004

Mr. John T. Reynolds  
Corporate Counsel  
San Antonio Water System  
P.O. Box 2449  
San Antonio, Texas 78298

OR2004-4166

Dear Mr. Reynolds:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201930.

The San Antonio Water System (the "system") received a request for eight categories of information regarding water quality in supply wells and stormwater runoff, enforcement of the City of San Antonio's aquifer protection ordinance, and recharge zone development. You state that the majority of the requested information will be made available to the requestor for copying. However, you claim that the remaining requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov't Code* § 552.301(b). You inform us that the system received the request for information on February 25, 2004. Therefore, the system had until March 10, 2004 to request a decision from this office as to whether the requested information must be disclosed to the requestor. The system did not request a decision from us with regard to whether the requested information must be disclosed to the requestor until March 16, 2004. Therefore, we find that the system failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision.

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(b) 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). Although you assert that the submitted information is excepted pursuant to section 552.107 of the Government Code, this is a discretionary exception and is not a compelling reason to overcome the presumption that the information at issue is public. *See* Open Records Decision Nos. 676 at 12 (2002) (harm to governmental body's interests under section 552.107 not compelling reason for non-disclosure). Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 522 at 4 (1989) (discretionary exceptions in general). Accordingly, none of the submitted information may be withheld under section 552.107. As you raise no other exception to the disclosure, the submitted information must 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 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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 201930

Enc. Submitted documents

c: Mr. Richard Alles  
Aquifer Guardians in Urban Areas  
530 Donaldson  
San Antonio, Texas 78201  
(w/o enclosures)

CAUSE NO. GN401701

SAN ANTONIO WATER SYSTEM BOARD	§	IN THE DISTRICT COURT OF
OF TRUSTEES,	§	
Plaintiff,	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS,	§	
Defendant.	§	261 <sup>ST</sup> JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff, San Antonio Water System Board of Trustees, and Defendant, Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Richard Alles, was sent reasonable notice of this setting and of the parties' agreement that SAWS may withhold the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED **FILED**

1. The information at issue, four written communications from SAWS's corporate

*Wanda Rodriguez-Ramirez*  
 DISTRICT CLERK  
 TRAVIS COUNTY, TEXAS

counsel to corporate managers, dated July 10, 2002, October 22, 2002, November 1, 2002, and November 8, 2002, are excepted from disclosure by Tex. Gov't Code § 552.107(1).

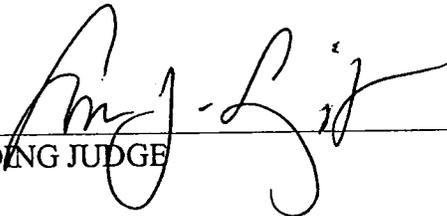
2. The San Antonio Water System Board of Trustees may withhold from the requestor the information at issue.

3. All costs of court are taxed against the parties incurring the same;

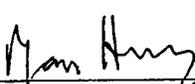
4. All relief not expressly granted is denied; and

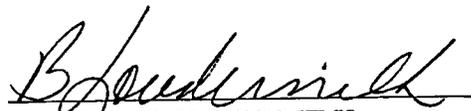
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 3<sup>rd</sup> day of November, 2004.

  
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PRESIDING JUDGE

APPROVED:

  
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