



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 19, 2004

Mr. Anthony Corbett  
Freeman & Corbett, L.L.P.  
8500 Bluffstone Cove, Suite B-104  
Austin, Texas 78759

OR2004-8889

Dear Mr. Corbett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211217.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received a request for four categories of information including "a copy of the spreadsheets showing all of the formulae relating to all of the financial calculations." You state that the district will release the requested information except for the spreadsheet containing the formulae. You state we have previously ruled that the spreadsheet containing the formulae is not subject to disclosure under the Public Information Act (the "Act"). You ask whether the district may continue to rely on that previous ruling, Open Records Letter No. 2002-6142 (2002). We have considered the submitted arguments. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

In Open Records Letter No. 2002-6142, we concluded that "the version of the spreadsheet with formulae is not public information subject to the Act." Open Records Letter No. 2002-6142 at 2 (2002). We based our conclusion on the district's representations that "the formulae used to derive the information in the spreadsheet was created by an independent contractor acting independently of the district, the district does not have a right of access to the information, and the information is not used in connection with the transaction of official business . . . ." *Id.* This office has held that to the extent that the law, facts, or circumstances on which a ruling is based remain unchanged, the governmental body may rely on the previous ruling with respect to the information that was the subject of the previous ruling.

*See* Gov't Code § 552.301(a); Open Records Decision 673 at 6-7 (2001). The district represents that the circumstances under which Open Records Letter No. 2002-6142 was issued have not changed. The requestor argues that circumstances have changed because some of the data in the spreadsheet released to him as a result of the present request is different than the data in the spreadsheet released to him as a result of his prior request. We understand that the district has analyzed new data with its version of the spreadsheet that does not contain the formulae, but that the district still has no right of access to the version of the spreadsheet with the formulae, and has not used that version in connection with the transaction of official business. Therefore, the district may rely on our previous ruling that the version of the spreadsheet with formulae is not public information subject to disclosure under the Act.

Finally, the requestor contends that the district has not complied with the requirements of section 552.301(b) of the Government Code because the district did not ask for a decision from this office within ten business days after receiving his written request. The requestor also asserts that the district did not submit the specific information requested as required by section 552.301(e)(1)(D) of the Government Code. However, because the district is relying on a previous ruling from this office to deny the present request for information, the district was not required to request a decision from this office in compliance with the deadlines in section 552.301. *See generally* Gov't Code § 552.301(a) (governmental body that receives written request for information it wishes to withhold from public disclosure must ask for decision from attorney general if there has been no previous determination about whether information falls within exception to disclosure); ORD 673.

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

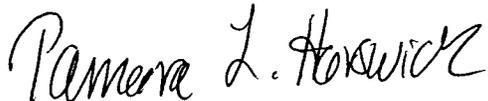
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 211217

Enc. Submitted documents

c: Mr. John McLemore  
8400 Cornerwood Drive  
Austin, Texas 78717