



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2005

Mr. J. Greg Hudson
Thomas Hudson & Brustkern, LLP
Attorneys at Law
3305 Northland Drive, Suite 301
Austin, Texas 7873160

OR2005-08003

Dear Mr. Hudson:

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# 231410.

The County Judge of Reeves County (the "county"), which you represent, received a request for information pertaining to the county's business relationships with three named parties. You state that many of the requested reports were conveyed orally and do not exist. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You also state that remaining requested information has been furnished to the requestor except for the redacted information in Exhibit C. You claim that the redacted 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 state, and the submitted information reflects, that the county received the initial request for information on June 3, 2005. Based on this date, the tenth business day following the county's receipt of the written request was June 17, 2005. You further state

that the county asked the requestor to clarify the request on June 15, 2005. *See* Gov't Code § 552.222; *see also* Open Records Decision No. 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). In Open Records Decision No. 663 (1999), this office determined that during the interval in which a governmental body and a requestor communicate in good faith to narrow or clarify a request, the Act permits a tolling of the statutory ten business day deadline imposed by section 552.301. However, a governmental body's request for clarification or narrowing does not give that governmental body an additional ten full days from the date the requestor responds to the clarification request. Rather, "the ten-day deadline is tolled during the process but resumes, upon receipt of the clarification or narrowing response, on the day that the clarification is received." ORD 663 at 5. Thus, the ten business day time period to request a decision from us under section 552.301(b) was tolled on the date that the county sought clarification of the request. *See* Gov't Code § 552.301(b). You state that the county received the clarification on the same day, June 15, 2005, that the county sought clarification. Accordingly, we conclude that the ten business day time period for requesting a decision from our office resumed on June 16, 2005. Thus, the deadline for submitting a request for a decision to our office was June 20, 2005. However, the county did not request a decision from this office or submit the information at issue until June 27, 2005. Although you claim that the county made another request for clarification on June 25, 2005, the county did not seek clarification until after the tenth business day. Thus, the statutory period was not tolled for purposes of subsections 552.301(a) and (b). *See* Open Records Decision No. 663 at 5 (1999) (providing that time period is tolled during the clarification process). Consequently, we conclude that the county failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us.

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 that the requested 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* 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). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you assert that the submitted information is excepted from disclosure 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 is public. *See* Open Records Decision No. 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, e.g.*, 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). Discretionary exceptions, therefore, do not generally provide compelling reasons for withholding requested information from disclosure. Accordingly, the redacted information in Exhibit C of the submitted information may not be withheld under section 552.107. As you raise no other exceptions to 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 county or county attorney. *Id.* § 552.3215(e).

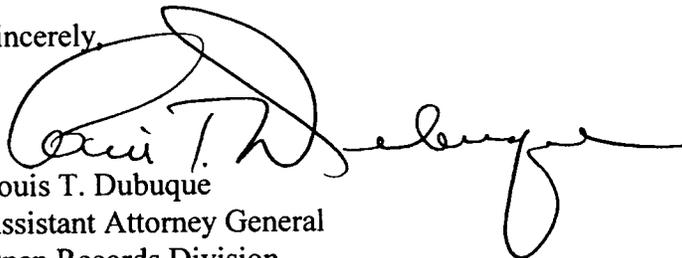
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/jh

Ref: ID# 231410

Enc. Submitted documents

c: Mr. Walter F. Roche, Jr., Staff Reporter
The Los Angeles Times
Suite 1100
1875 1 St. N. W.
Washington, D.C. 20006-5482
(w/o enclosures)