

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 9, 2006

Ms. Jo-Christy Brown  
Brown & Carls, L.L.P.  
106 East Sixth Street, Suite 550  
Austin, Texas 78701

OR2006-04800

Dear Ms. Brown:

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# 248521.

The City of Bastrop (the "city"), which you represent, received a request for, all records and documents which relate to the disconnection of utilities by the City of Bastrop to structures, residences, or buildings which have been made on the basis that the property has not been properly platted or subdivided. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code and Texas Rule of Evidence 503. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Although you state the city received the request for information on February 8, 2006, you did not request a decision from this office until March 3, 2006. Thus, the city failed to comply with the procedural requirements mandated by section 552.301.

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, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.*

§ 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).

Although you raise sections 552.103, 552.107, and 552.111 of the Government Code and Rule 503 of the Texas Rules of Evidence, these exceptions and this rule are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); see also Open Records Decision Nos. 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason for purposes of section 552.302 if it does not implicate third-party rights), 663 at 5 (1999) (governmental body may waive sections 552.103, 552.107, and 552.111), 665 at 2 n.5 (2000) (discretionary exceptions in general), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception). Accordingly, the city may not withhold the requested information pursuant to sections 552.103, 552.107, 552.111 or Rule 503.

You also claim section 552.101 of the Government Code as an exception to disclosure. Section 552.101 can provide a compelling reason for overcoming the presumption of openness. See Open Records Decision No. 150 at 2 (1977). However, you only claim section 552.101 excepts the submitted information in conjunction with the attorney-client privilege found in Rule 503. Section 552.101 does not encompass the attorney-client privilege. See Open Records Decision No. 676 at 1-3 (2002) (section 552.101 does not encompass discovery privileges). Accordingly, the submitted information may not be withheld under section 552.101 on the basis you claim.

We note, however, the submitted information includes e-mail addresses that are subject to section 552.137 of the Government Code.<sup>1</sup> Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). We have marked e-mail addresses in the submitted information that are not of a type specifically excluded by section 552.137(c). The city must withhold these marked e-mail addresses in accordance with section 552.137, unless the city receives consent for their release.

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Finally, we note that portions of the submitted information appear to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the city must withhold the e-mail addresses we have marked under section 552.137, unless the city receives consent for their release. The remaining submitted information must be released; however, in releasing information that is protected by copyright, the city must comply with copyright law.

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 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 Office of the Attorney General 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. 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/eb

Ref: ID# 248521

Enc. Submitted documents

c: Ms. Christine Files  
Attorney at Law  
702 Chestnut Street, Suite 105  
Bastrop, Texas 78602  
(w/o enclosures)

CAUSE NO. D-1-GV- 06-001026

CITY OF BASTROP, TEXAS

§ IN THE DISTRICT COURT OF

V.

§

§

TRAVIS COUNTY, TEXAS

§

GREG ABBOTT, TEXAS ATTORNEY  
GENERAL

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201<sup>ST</sup> JUDICIAL DISTRICT

**ORDER**

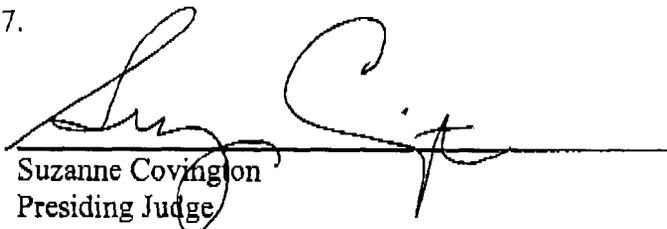
On this 8<sup>th</sup> day of March 2007, came on to be heard Plaintiff's Motion for Summary Judgment, Supplemental Corrections to Plaintiff's Motion for Summary Judgment and Defendant's Traditional Motion for Summary Judgment. The Court has considered the motions, the responses, the replies, the summary judgment evidence, the pleadings and arguments of counsel. Plaintiff's Motion for Summary Judgment and Supplemental Corrections to Plaintiff's Motion for Summary Judgment is GRANTED. Defendant's Traditional Motion for Summary Judgment is DENIED.

Plaintiff's objection to the second paragraph of Mr. Garon's statement in Defendant's Exhibit B is SUSTAINED.

Plaintiff's objection to Exhibit B-1 to Defendant's Exhibit B is SUSTAINED.

The Court does not rule on the Plaintiff's objections to Exhibit C and Exhibit D to Defendant's Motion since they relate to the non-prevailing party's attorney's fees.

SIGNED this 29<sup>th</sup> day of March 2007.

  
Suzanne Covington  
Presiding Judge