



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2006

Mr. Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2006-09591

Dear Mr. Smith:

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# 257133.

The Williamson County Appraisal District (the "district"), which you represent, received a request for "an updated copy . . . of the Master Appraisal data files for Tax Year 2006[.]" You assert that the district need not comply with the request because it constitutes a standing request. You also contend that the requested information is in "active use" and therefore not subject to disclosure at this time. Further, you claim that the requested information is excepted from disclosure under section 552.111 of the Government Code. Lastly, you assert that in the event our office determines the requested information must be released, the district "will have to write a program" in order to create a version of the appraisal data as of the date of the request. We have considered all of your arguments and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor's attorney. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

First, the district asserts that the request is "ongoing" and thus constitutes an improper standing request. Consequently, you argue that the district need not provide the requested information. This office has previously ruled that a governmental body need not honor a standing request. A "standing request" refers to a request to provide information "on a periodic basis," *see* Open Records Decision No. 465 (1987); a weekly basis, *see* Open

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Records Decision No. 476 (1987); or to provide information that has not yet been recorded, *see* Open Records Decision No. 452 (1986). In this instance, however, the district acknowledges that the requestor wants a copy of the file as of the date of her request on May 18, 2006. Therefore, the request is not a standing request. Accordingly, the district must comply with the request.

Second, you assert that the requested information is in active use and therefore unavailable pursuant to section 552.221 of the Government Code. Section 552.221(a) provides that a governmental body must promptly produce public information to a requestor for inspection, duplication, or both to the extent that the information is not subject to an exception to disclosure under the Act and to the extent that the information is not in immediate active use. *See* Gov't Code § 552.221(a); *see also* Open Records Decision No. 467 at 6 (1987). If requested information is temporarily unavailable because it is in active use or in storage, the officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be made available for inspection or duplication. *See* Gov't Code § 552.221(c).

Upon review, we do not agree with the district's assertion that the requestor may not be allowed to view the responsive information because the file is updated daily by the district and thus is in active use. This office has never stated that the fact that information is subject to being updated means that the information is in active use. Thus, we disagree that the requested information is in "active use."

Next, we must address the district's obligations under the Act, chapter 552 of the Government Code. Section 552.301(b) of the Government Code provides that a governmental body that wishes to withhold requested information must "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request." Gov't Code § 552.301(b). Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) 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. Gov't Code § 552.301(e)(1)(A)-(D). The submitted documents reflect that the initial request for information was received by the district on May 18, 2006. The documents also show that the district communicated with the requestor for the purposes of clarification on June 1, 2006. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *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). 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 district sought clarification of the request from the requestor. *See* Gov't Code § 552.301(b); *see also* Open

Records Decision No. 663 at 5 (1999) (clarification does not trigger a new ten business day time interval, but merely tolls the ten day deadline during the clarification or narrowing process, which resumes upon receipt of the clarification or narrowing response). You have provided documentation showing that the district received the requestor's clarification on June 7, 2006. Accordingly, we conclude that the ten business day time period for requesting a decision from our office resumed on June 8, 2006. However, the district did not request a decision from this office until June 13, 2006. Consequently, we conclude that the district 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 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 speaking, a compelling reason for non-disclosure exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although the district claims that the information at issue is excepted from disclosure pursuant to section 552.111 of the Government Code, this exception to disclosure is discretionary and may be waived by a governmental body's failure to comply with section 552.301. *See* Open Records Decision Nos. 473 (1987) (governmental body may waive section 552.111), 522 at 4 (1989) (discretionary exceptions in general). Therefore, no portion of the submitted information may be withheld pursuant to this exception. As the district raises no other exceptions to disclosure, the requested information must be released.

Lastly, the district claims that if it is required to release the requested information, it must "write a program" in order to create the requested version of the appraisal data. We note that section 552.231 of the Government Code sets out the procedures a governmental body must follow if responding to a request for information would require programming or manipulation of data. Section 552.231 provides in part:

(a) A governmental body shall provide to a requestor the written statement described by Subsection (b) if the governmental body determines:

(1) that responding to a request for public information will require programming or manipulation of data; and

(2) that:

(A) compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or

(B) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

(b) The written statement must include:

- (1) a statement that the information is not available in the requested form;
- (2) a description of the form in which the information is available;
- (3) a description of any contract or services that would be required to provide the information in the requested form;
- (4) a statement of the estimated cost of providing the information in the requested form, as determined in accordance with the rules established by the General Services Commission under Section 552.262; and
- (5) a statement of the anticipated time required to provide the information in the requested form.

Gov't Code § 552.231(a), (b). According to section 552.003(2), "manipulation" means "the process of modifying, rendering, or decoding of information with human intervention." Gov't Code § 552.003(2). Section 552.231(a)(2) provides that the district must provide a statement to the requestor as described in section 552.231(b) if the compliance with the request is either: (1) not feasible or will result in substantial interference with its ongoing operations, *or* (2) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data. Gov't Code § 552.231(a)(2). However, you assert both sections 552.231(a)(2)(A) and (B). You state that the request "is not feasible and would cause substantial interference with on going operations." You also state that the district "will provide the requestor with a detailed estimate of the costs of making such information available[.]" The district makes contradictory statements with regard to the programming required to respond to this request. If the district is able to provide the requestor with an estimate of the programming costs, it must do so in accordance with section 552.231. Once the district provides the required statement to the requestor, the district has no obligation to provide the requested information in the requested form until the requestor responds to the district in writing. *See* Gov't Code § 552.231(d).

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).

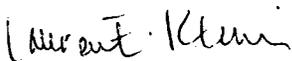
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/eb

Ref: ID# 257133

Enc. Submitted documents

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(w/o enclosures)