



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 7, 2007

Mr. Philip A. McKinney
P.A. McKinney & Associates
P.O. Box 2747
Corpus Christi, Texas 78403

OR2007-01581

Dear Mr. McKinney:

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# 275025.

The Coastal Bend College (the "college"), which you represent, received a request for six categories of information, including minutes from 2006 executive sessions and personnel files of named individuals. You state that some of the requested information has been tendered to the requestor, but claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Initially, we must address the college's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. You state that the public information officer for the college received the request for information on January 3, 2007, but the college did not request a ruling from this office until January 26, 2007. Thus, the college 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* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); *Open Records Decision No. 319* (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. *Open Records Decision No. 150* (1977). Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption; therefore, we will consider whether this section requires 271597 to withhold the submitted information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” Thus, such information cannot be released to a member of the public in response to an open records request. *See* *Open Records Decision No. 495* (1988). We agree that the college must withhold the requested certified minutes from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

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).

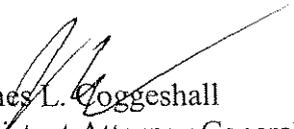
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/vh

Ref: ID# 275025

Enc. Submitted documents

c: Mr. Frederick J. McCutcheon
Wood, Boykin & Wolter, P.C.
615 North Upper Broadway, Suite 1100
Corpus Christi, Texas 78477-0397
(w/o enclosures)