



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2007

Mr. Charles H. Wilson
Epstein, Becker, Green, Wickliff & Hall, P.C.
Wells Fargo Plaza
1000 Louisiana, Suite 5400
Houston, Texas 77002-5013

OR2007-10552

Dear Mr. Wilson:

The Gulf Coast Community Services Association (the "association"), which you represent, received a request for twenty-eight categories of information related to association finances, staffing, consultants, and operations. By letter dated July 24, 2007, you represented to this office that the requestor had withdrawn his request for information by operation of law. Based upon your representation, this office closed its file without a ruling on July 26, 2007. Following a complaint from the requestor, we examined the cost estimate upon which your representation was based, and have determined that it does not comply with the cost provisions of section 552.2615 of the Public Information Act (the "Act"), chapter 552 of the Government Code. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued decision. Consequently, this decision serves as the correct ruling and is a substitute for the letter issued on July 26, 2007. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Act).

You ask whether certain information is subject to required public disclosure under the Act. Your request was assigned ID# 284962.

You state that some responsive information will be provided to the requestor. You also state that the association has previously released information in response to a prior request for information from this requestor. *See* Gov't Code § 552.232 (prescribing procedures for response to repetitious or redundant request for information). You indicate that the

association has no information responsive to portions of the request.¹ You assert that information responsive to items (9) and (20) of the request “is not available in the format requested, and this request would require the [a]ssociation to create a new document or engage in extensive research to gather the information[.]” We first note that the administrative inconvenience involved in responding to a request for information does not excuse a failure to comply with the Act. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). We agree that the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that receives the request. *See* Gov’t Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). But a governmental body must make a good-faith effort to relate a request to information that is within the governmental body’s possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). You claim that some of the requested information is excepted from disclosure under sections 552.102 and 552.107 of the Government Code.² We have considered the exceptions you claim. We have also considered comments submitted by the requestor. *See* Gov’t Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Under section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general 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). You have not provided to this office a copy or representative sample of the information requested. Consequently, you have failed to comply with section 552.301 of the Government Code.

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

¹The Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988).

²Although you raise section 552.101 of the Government Code for the attorney-client privilege, section 552.107 is the correct exception to raise.

exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.107 of the Government Code is a discretionary exception which protects the governmental body's interest and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, section 552.107 does not provide a compelling reason for non-disclosure under section 552.302, and the association may not withhold any of the requested information under this exception.

Section 552.102 of the Government Code is a mandatory exception and may be a compelling reason that overcomes the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). However, because you have not submitted the requested information, we have no basis for finding it confidential under the claimed mandatory exception. Thus, we have no choice but to order you to release the responsive information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 284962

No enclosures

c: Mr. Donald R. Shepherd
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(w/o enclosures)