

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2008

Mr. George E. Hyde
Denton, Navarro, Rocha, & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2008-17126

Dear Mr. Hyde:

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# 328928.

Bandera County (the "county"), which you represent, received two requests from different requestors for the itemized billing statements and detailed invoices pertaining to seven checks written by the county to a specified law firm. You claim that the requested information is excepted from disclosure under sections 552.103, 552.107, and 552.136 of the Government Code and protected under Federal Rule of Civil Procedure 26, Texas Rule of Evidence 503 and Texas Rules of Civil Procedure 192.3 and 192.5.¹ We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestors. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

¹Although you also raise section 552.101 of the Government Code in conjunction with Federal Rule of Civil Procedure 26, the attorney-client privilege under Texas Rule of Evidence 503, the attorney work product privilege under Texas Rule of Civil Procedure 192.5, and Texas Rule of Civil Procedure 192.3 this office has concluded that section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990)*. In addition, you also raise section 552.022 of the Government Code. However, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See Gov't Code § 552.022*.

Initially, we address the county's procedural obligations under section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *Id.* § 552.301. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(d) provides that a governmental body that requests an attorney general decision must provide to the requestor, not later than the tenth business day after the date of its receipt of the written request for information:

- (1) a written statement that the governmental body wishes to withhold the requested information and has asked for an attorney general decision about whether the information is within an exception to public disclosure; and
- (2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

Id. § 552.301(d). You state that the county received the second request for information on October 1, 2008. Thus, the county was required to request the attorney general's decision, state the exceptions to disclosure that it claims, and mail a properly addressed copy of its request for a ruling to the second requestor no later than October 16, 2008.² In correspondence to this office postmarked October 27, 2008, the second requestor informed us that, as of the date of that correspondence, he had not received a copy of the request for a ruling from the county, nor had he received any of the requested information. Section 552.308 of the Government Code provides in pertinent part:

(a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period . . . the requirement is met if the document is sent to the person by first class United States mail *properly addressed* with postage prepaid and:

- (1) it bears a post office cancellation mark indicating a time within that period; or
- (2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within that period.

²You inform this office that the county was closed on October 13, 2008 for the Columbus Day holiday.

Id. § 552.308(a) (emphasis added). We note the address for the second requestor listed in the carbon copy field on the county's request for a ruling from the attorney general is an incorrect address consisting of an erroneous post office box number. Pursuant to section 552.303 of the Government Code, we notified the county by facsimile and letter that this office required additional information to determine if a properly addressed copy of the county's request for a ruling pertaining to the request by the second requestor was sent to him and timely deposited in the United States mail, as required by sections 552.301(d) and 552.308(a) of the Government Code.

In response to the request for additional information, the county states "[a]pparently a typographical error in the last digit of the P.O. Box number for the requestor resulted in the return [of the copy of the request for a ruling sent to him]." The county then asserts, and has submitted supporting documentation, that upon the return of the improperly addressed letter, the county immediately sent the second requestor two properly addressed copies of the request for a ruling on October 27, 2008, and October 28, 2008. As noted above, however, the county was required to mail a properly addressed copy of its request for a ruling to the second requestor no later than October 16, 2008. Accordingly, we find that the county has failed to meet the elements of timeliness established by section 552.308(a). Thus, we conclude that the county failed to comply with section 552.301(d) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with 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). 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). Although you raise sections 552.103 and 552.107 of the Government Code, Federal Rule of Civil Procedure 26, Texas Rule of Evidence 503, and Texas Rules of Civil Procedure 192.3 and 192.5, these exceptions and rules 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, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under rule 192.5 is not compelling reason to withhold information under section 552.302), 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 663 at 5 (1999) (governmental body may waive sections 552.103 and 552.107); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). In failing to comply with section 552.301, the county has waived its claims under sections 552.103 and 552.107

of the Government Code, Federal Rule of Civil Procedure 26, Texas Rule of Evidence 503, and Texas Rules of Civil Procedure 192.3 and 192.5, and may not withhold any of the submitted information based upon these exceptions and rules. However, you also raise section 552.136 of the Government Code. Because section 552.136 constitutes a compelling reason for nondisclosure, we will address the county's argument under this exception.

Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Accordingly, we find that the county must withhold the bank account and bank routing numbers we have marked under section 552.136 of the Government Code. As you have raised no further exceptions to disclosure, the remaining information must be released to both requestors.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 328928

Enc. Submitted documents

c: Requestors
(w/o enclosures)

cc: Mr. Roger Sullivan
P.O. Box 64064
Pipe Creek, Texas 78063
(w/o enclosures)

L.M. JUN 29 2009

At 8:40 A.M.
Ofelia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GV-08-002871

COUNTY OF BANDERA, TEXAS
Plaintiff,

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IN THE DISTRICT COURT OF

V.

TRAVIS COUNTY, TEXAS

GREG ABBOTT, ATTORNEY GENERAL
OF TEXAS,
Defendants.

261ST JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff County of Bandera, Texas, and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552 (West 2004 & Supp. 2008). The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestors, Bunker B. W. Rogge and Roger Sullivan, were sent reasonable notice of this setting and of the parties' agreement that the County may withhold some of the information at issue; that the requestors were also informed of their right to intervene in the suit to contest the withholding of this information; and that no requestors has informed the parties of his intention to intervene. Neither has a requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. Some of the information at issue, specifically, those descriptions or partial descriptions of services performed, as marked by the Attorney General, in the fee bills from Denton, Navarro, Rocha & Bernal, for the period of time between May 10, 2007 and

December 13, 2007, are confidential under Tex. R. Evid. 503;

2. The County may withhold from the requestor the information described in ¶ 1 of this Judgment.

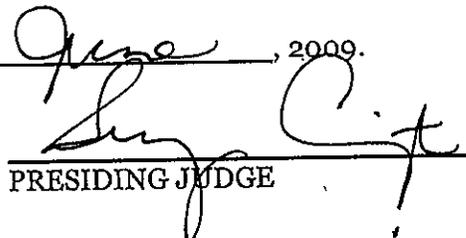
3. The County represents to the court that it no longer contests the disclosure of the remaining information at issue; if it has not already done so, the County will disclose this information to the requestors promptly upon receipt of a final judgment signed by the court. The County represents that it has or will disclose to the requestors all information responsive to each request for information except for that information excepted from disclosure in the letter ruling or by paragraph 1 of this Judgment.

4. All costs of court are taxed against the parties incurring the same;

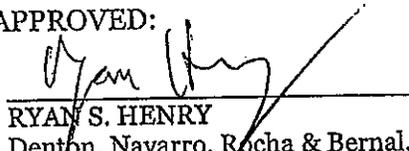
5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 29 day of June, 2009.


PRESIDING JUDGE

APPROVED:


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