



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 12, 2009

Mr. Jefferson B. Davis  
Clardy Davis & Knowles, LLP  
P.O. Box 635426  
Nacogdoches, Texas 75961

OR2009-12403A

Dear Mr. Davis:

This office issued Open Records Letter No. 2009-12403 (2009) on September 2, 2009. Since that date, you have provided new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on September 2, 2009. *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 Public Information Act ("Act")). This ruling was assigned ID# 354878.

Nacogdoches County (the "county"), which you represent, received a request for fifteen categories of information relating to the Lake Naconiche project. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.105, 552.107, 552.109, 552.110, 552.111, 552.116, 552.117, 552.128, 552.133, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim.

We must address the county's obligations under the Act. Section 552.301(b) of the Government Code requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, 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. *See id.* § 552.301(e).

You state, and provide documentation showing, that the county received the initial request for information on June 19, 2009. You further state that the county was closed for business on July 3, 2009. Thus, you timely submitted the county's request for a ruling to our office

on July 6, 2009. You inform our office that on that same date, July 6<sup>th</sup>, the county also asked the requestor to clarify the request pursuant to section 552.222(b) of the Government Code. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). In Open Records Decision No. 663 (1999), this office determined that during the interval in which a governmental body and a requestor communicate in good faith to narrow or clarify a request, the Act permits a tolling of the statutory ten-business-day deadline imposed by section 552.301. Open Records Decision No. 663 at 5 (1999). In this instance, the fifteen-business-day deadline to comply with section 552.301(e) was tolled on July 6, 2009, the date that the county sought clarification of the request. *See Gov't Code* § 552.301(e); *cf.* Open Records Decision No. 663 at 5 (1999) (clarification does not trigger new ten-business-day time interval, but merely tolls ten-business-day deadline during clarification or narrowing process, which resumes upon receipt of clarified or narrowed response). Section 552.222(d) also provides that a request for information is considered withdrawn if the requestor does not respond in writing to a governmental body's written request for clarification or additional information within 61 days. *See Gov't Code* § 552.222(d).

You assert that the requestor has not adequately responded to the county's request for clarification. Therefore, the county now considers this request withdrawn by operation of law under section 552.222(d). Section 552.222(d) requires a "written response from the requestor" by the 61<sup>st</sup> day after the governmental body sends a written request for clarification. *See id.* You acknowledge that the requestor responded to the county's request for clarification by letter on September 4, 2009. We find that the requestor's written response met the requirements of section 552.222(d). *See id.* As the requestor responded to the county's clarification request in writing within 61 days, we determine that the request was not withdrawn by operation of law. Accordingly, the county's fifteen-business-day deadline, which was tolled on July 6, 2009, resumed on September 4, 2009. *See id.* § 552.301(e). Thus, the county's fifteen-business-day deadline to comply with the requirements of section 552.301(e) was on September 14, 2009.<sup>1</sup> The county submitted its arguments as to why the requested information should not be released by September 14, 2009. However, as of the date of this ruling, the county still has not submitted the requested information or a representative sample of information for our review. Thus, we find that the county has failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Gov't Code* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ)

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<sup>1</sup>We note that September 7, 2009 was the Labor Day holiday.

(governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Because the county has failed to comply with the requirements of the Act, the county has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the county also raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information confidential by law. We, therefore, conclude the county must release the requested information to the requestor pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/jb

Ref: ID# 353878

c: Requestor