



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2009

Mr. Will C. Jones IV  
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1201 Rio Grande Street, Suite 100  
Austin, Texas 78701

OR2009-15985

Dear Mr. Jones:

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# 361130.

The Red Sands Groundwater Conservation District (the "district"), which you represent, received a request for the "minutes, plans and studies of the district."<sup>1</sup> You state the district has released "most" of the requested information. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim.

Initially, you inform us that some of the responsive information consists of minutes from closed meetings of the district's board. Section 552.101 of the Government Code encompasses information protected by other statutes, such as section 551.104(c) of the Government Code, which 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)."<sup>2</sup> Gov't Code § 551.104(c). The district is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. *See Open*

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<sup>1</sup>As you have not submitted the request for information, we take our description from the submitted information.

<sup>2</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code). Such information cannot be released to a member of the public in response to an open records request. *See* ORD 495 (1988). Likewise, this office has determined that minutes of a closed meeting are confidential. *See* Open Records Decision No. 60 (1974) (closed meeting minutes are confidential under predecessor to section 551.104); *see also* Open Records Decision Nos. 563 (1990) (minutes of properly held executive session are confidential under Open Meetings Act); ORD 495 (1988) (information protected under predecessor to section 551.104 cannot be released to member of public in response to open records request). Accordingly, the district must withhold any responsive certified agenda, tape recording, or minutes of closed meetings of the district's board under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

With respect to the remaining responsive information that you seek to withhold, which you state consists of communications between the district and its attorney, we must address the district's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Under section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the written request for information and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(B), (D). You have not submitted a copy of the written request for information or a copy of the specific information requested or representative samples of the requested information. Thus, the district failed to comply with the requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the 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 id.* § 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); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). By failing to comply with the procedural requirements of the Act, the district waived its claim under section 552.107 of the Government Code, which is a discretionary exception to disclosure. *See* Open Records Decision Nos. 676 at 11-12 (2002) (attorney-client privilege under section 552.107 and Texas Rule of Evidence 503 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for a decision resulted in waiver of discretionary exceptions), 630 at 4-5 (1994)

(governmental body may waive statutory predecessor to section 552.107). Further, even if the district had raised a mandatory exception to disclosure that may not be waived, you have not submitted any information for our review. Therefore, we have no basis for finding any information confidential. Thus, we have no choice but to order the district to release the remaining requested information. 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.

In summary, the district must withhold any responsive certified agenda, tape recording, or minutes of closed meetings of the district's board under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. The remaining responsive information must be released.

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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

Ref: ID# 361130

c: Requestor