



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2010

Ms. Patricia J. Mata
Office Manager
Mirando City Water Supply Corporation
P.O. Box 57
Mirando City, Texas 78369

OR2010-16807

Dear Ms. Mata:

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# 402893.

The Mirando City Water Supply Corporation (the "corporation") received a request for the following information: 1) the document that provides a 50 year lease to the corporation for the purpose of providing water; 2) the document that transfers the land on which the corporation is located; 3) the list of past-due accounts for February, 2010; (4) minutes of a corporation board meeting in which the corporation accepted the requestor's resignation; and 5) all certificates of training, licenses, and other documents pertaining to the requestor. You inform us that the corporation is "willing . . . to provide [the requestor] with any and all certificates of training, licenses, and other documents pertaining to him personally," but otherwise claim that the corporation is not subject to the Act and therefore need not respond to the information request. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted to this office 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).

The Act requires a governmental body to make information that is within its possession or control available to the public, with certain statutory exceptions. *See* Gov't Code §§ 552.002(a), .006, .021. Under the Act, the term "governmental body" includes several enumerated kinds of entities, including "the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service,

or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code[.]” Gov’t Code § 552.003(1)(A)(ix).

According to its articles of incorporation, the corporation was organized under the authority of the predecessor to chapter 67 of the Water Code.¹ Therefore, if the corporation is exempt from ad valorem taxation under section 11.30 of the Tax Code, it is a governmental body for purposes of the Act. Section 11.30 provides in pertinent part:

A corporation organized under Chapter 67, Water Code, that provides in the bylaws of the corporation that on dissolution of the corporation the assets of the corporation remaining after discharge of the corporation's indebtedness shall be transferred to an entity that provides a water supply or wastewater service, or both, that is exempt from ad valorem taxation is entitled to an exemption from taxation

Tax Code § 11.30(a)

Pursuant to section 552.303(c) of the Government Code, this office sent a notice to you via facsimile requesting that you provide this office with a copy of the corporation’s bylaws. You provided the bylaws in response to our request. Upon review of the bylaws, we note that Article XV pertains to the distribution of the corporation’s assets upon discontinuance of the corporation. The bylaws state in pertinent part:

Upon the discontinuance of the Corporation by dissolution or otherwise, all assets of the Corporation shall be distributed among the Members and former Members in direct proportion to the amount of their patronage with the Corporation insofar as practicable By application for and acceptance of membership in the Corporation, *each Member agrees that upon discontinuance of the Corporation by dissolution or otherwise, all assets of the Corporation transferred to that Member shall be in turn immediately transferred by the individual Member to an entity that provides a water supply or wastewater service, or both, that is exempt from ad valorem taxation.* By application for and acceptance of membership in the Corporation, each Member grants the Corporation’s Board of Directors that member’s permission to execute all instruments and documents necessary to effectuate such transfers in order to preserve the Corporation’s statutory rights to exemption from income and ad valorem taxation. [Emphasis added]

Accordingly, because the corporation’s bylaws provide that on dissolution of the corporation, the assets of the corporation remaining after discharge of the corporation's indebtedness shall be transferred to an entity that provides a water supply or wastewater service, or both, that

¹Article 1434a V.T.C.S. was repealed and recodified as chapter 67 of the Texas Water Code by the Seventy-fifth Legislature in a nonsubstantive recodification of statutes pertaining to utilities. Act of May 8, 1997, 75th Leg., R.S., ch. 166, §§ 2, 9, 1997 Tex. Gen. Laws 713, 1001, 1018.

is exempt from ad valorem taxation, the corporation is exempt from taxation under section 11.30. Therefore, we conclude the corporation is a governmental body as that term is defined by section 552.003(1)(A)(ix) of the Government Code.² See Gov't Code § 552.003(1)(A)(ix); Tax Code § 11.30(a). Therefore, as a governmental body subject to the Act, the corporation is required by the Act to either provide the requested information to the requestor or to seek a ruling from this office as to whether the requested information is subject to one of the Act's exceptions to disclosure.

We note your assertion that a portion of the requested information is "not of any concern" to the requestor, and that he may use some of the requested information "in a malicious manner." With regard to these concerns, we note that a requestor's motives are irrelevant to the question of whether requested information may be withheld from public disclosure. See Gov't Code § 552.222(a)-(b); Open Records Decision No. 542 at 4 (1990). A governmental body must release the information to which a requestor seeks access unless the information falls within the scope of an exception to public disclosure under the Act. See Gov't Code § 552.221; Open Records Decision No. 664 (2000). We note that a governmental body is not responsible for the use that may be made of information that it releases to the public. See Gov't Code § 552.204; Open Records Decision No. 508 at 3 (1988) (use that may be made of information does not control whether it falls within exception to disclosure).

Turning to the question of the required disclosure of the requested information, we note that you did not comply with several procedural requirements in the Act. You did not seek a ruling from this office within the ten business day time period as required by subsections 552.301(a) and (b). In addition, you did not comply with the procedures set out in section 552.301(e). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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. You did not, however, submit to this office within fifteen business days a copy of the written request for information, a signed statement or sufficient evidence showing the date the corporation received the written request, or a copy of the specific information requested or representative samples.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely seek an open records ruling in accordance with section 552.301(a) or to timely submit

²In support of this conclusion, we also note that the bylaws, in Article XIX, provide that "[w]ith prior written request, corporate records, books, and annual reports, subject to exceptions provided by the [Act], Chapter 552, Texas Government Code, including any amendments thereto, shall be available for public inspection and copying by the public or their duly authorized representatives during normal business hours subject to a reasonable charge for preparation of copies. In the event of any conflict between the provisions of the [Act] and the provisions of the Bylaws, the provisions of the [Act] shall prevail."

to this office the information required in section 552.301(e) results in the legal presumption that the 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 id.* § 552.302; *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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994).

You have raised no exceptions to disclosure of the requested information, but you do assert that, with regard to the requested list of past-due accounts, “we have privacy issues to adhere to.” In this regard, we note that section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses the doctrine of common-law privacy. Gov’t Code § 552.101. Common-law privacy protects the privacy interests of individuals, but not of corporations or other types of business organizations. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also* *U. S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.—Houston [14th Dist.] 1989), *rev’d on other grounds*, 796 S.W.2d 692 (Tex. 1990) (corporation has no right to privacy). Further, this office has also found that common-law privacy encompasses certain types of personal financial information. Financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities). The assertion of an individual’s common-law privacy interests can constitute a compelling reason to overcome the presumption of openness under section 552.302. However, because you have not submitted the responsive information, we have no basis for finding it confidential. Thus, we have no choice but to order the requested information released per section 552.302. If you believe the requested 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, 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,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/em

Ref: ID# 402893

c: Requestor