



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2011

Mr. J. RonS Young
Young & Brooks, Attorneys at Law
1415 Louisiana, 5th Floor
Houston, Texas 77002-7349

OR2011-11416

Dear Mr. Young:

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# 426288.

The Montgomery County Municipal Utility District, Number 18, (the "district"), which you represent, received a request for information pertaining to "test holes and wells placed into the Catahoula Aquifer." You claim the requested information is excepted from disclosure under sections 552.104, 552.110, and 552.113 of the Government Code. We have considered the exceptions you claim. We have also received and considered comments from a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We must address the district's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a 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). As of the date of this letter, you have not submitted to this office a copy or representative sample of the information requested. Consequently, we find the district failed to comply with the requirements of section 552.301.

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 information is public and 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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). 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). You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. However, section 552.104 is a discretionary exception to disclosure, which may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 592 (1991) (stating that governmental body may waive Gov't Code § 552.104). In failing to comply with the procedural requirements of section 552.301 of the Government Code, you have waived all of your discretionary exceptions. Thus, the district may not withhold any of the requested information under section 552.104 of the Government Code.

Sections 552.110 and 552.113 of the Government Code provide compelling reasons to overcome the presumption of openness. However, because you have not submitted the requested information to this office for our review, we have no basis for finding it confidential under either of these claimed mandatory exceptions. 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 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/tf

Ref: ID# 426288

Enc. Submitted documents

c: Requestor
(w/o enclosures)