



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2011

Ms. Kathryn Lumpkin  
Bickerstaff Heath Delgado Acosta LLP  
Building One, Suite 300  
3711 South Mopac Expressway  
Austin, Texas 78746

OR2011-13802

Dear Ms. Lumpkin:

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# 431572.

The Agua Special Utility District (the "district"), which you represent, received a request for a listing of retail customers who received water bills amounting to at least fifty dollars between April 1, 2009 and May 1, 2011. You provide documentation reflecting bills for April 1, 2011 through May 1, 2011 did not exist on the date the district received the request.<sup>1</sup> You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

We must address the district's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See Gov't Code § 552.301(b)*. Pursuant to section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the request

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received or to create information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

(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).

In this instance, you state the district received the request for information on March 31, 2011. Accordingly, the district was required to request a decision from this office by April 14, 2011, and to submit the information required by section 552.301(e) by April 21, 2011. You requested a ruling from this office on July 27, 2011 and, 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 section 552.301 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 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, 381-82 (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); *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* ORD 630. You raise section 552.101 of the Government Code, which is a mandatory exception to disclosure. However, 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 district 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,

A handwritten signature in black ink, appearing to read 'Bob Davis', written in a cursive style.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/akg

Ref: ID# 431572

Enc. Submitted documents

c: Requestor  
(w/o enclosures)