



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2014

Ms. Cathie Childs
Counsel for Mystic Oak Water Supply, Inc.
Cathie Childs, P.C.
3736 Bee Caves Road, #1-140
Austin, Texas 78746

OR2014-14135

Dear Ms. Childs:

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# 532767.

Mystic Oak Water Supply, Inc. ("Mystic"), which you represent, received three requests from the same requestor for e-mail addresses and titles of specified individuals and seven categories of information pertaining to Mystic. We understand you claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Initially, we note Mystic seeks to withdraw its request for an open records decision because Mystic asserts the request for information was withdrawn by operation of law when the requestor failed to timely respond to a cost estimate for providing the requested records. Upon review of a copy of the cost estimate, we find it does not comply with the requirements of section 552.2615(a) of the Government Code. *See* Gov't Code § 552.2615(a). Accordingly, we conclude the request for information was not withdrawn by operation of law. *See id.* § 552.2615(b).

Next, Mystic states it will make the requested information available to the requestor for inspection. However, the requestor states he wishes to receive a copy of the requested information. The duty of the public information officer is to promptly produce public information so that the requestor may inspect the information, copy the information, or both

inspect and copy the information, whichever the requestor chooses. *See id.* § 552.221(a); Open Records Decision No. 512 at 1 (1988) (predecessor provisions of the Act gives requestor option to take notes from original documents, pay for copies of public records, or both). The language of section 552.221 does not give the public information officer the discretion to choose whether to comply; upon request for the information, the officer must make the information available as required under section 552.221. *Moore v. Collins*, 897 S.W.2d 496, 499 (Tex. App.—Houston [1st Dist.] 1995, no writ). The requestor asked for a copy of the information at issue; therefore, pursuant to section 552.221 of the Government Code, Mystic must provide a copy of the information at issue to the requestor.

We must address Mystic'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. *See Gov't Code* § 552.301. 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) 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. *Id.* § 552.301(e). In this instance, you state Mystic received the first request for information on May 21, 2014. As of the date of this letter, you have not submitted for our review a copy or representative sample of the information requested. Consequently, we find Mystic failed to comply with the requirements of section 552.301 of the Government Code.

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 unless a compelling reason exists to withhold the information from disclosure. *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 compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although Mystic raises a mandatory exception to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the requested information released 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 532767

c: Requestor