



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 22, 2016

Mr. Robert L. Harris
Counsel to Mustang Special Utility District
RL Harris Law
3917 Edgewater Court
Richardson, Texas 75082

OR2016-26022

Dear Mr. Harris:

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# 635504.

The Mustang Special Utility District (the "district"), which you represent, received a request for seven categories of information regarding loans, provision of utilities, district policies, and correspondence on a specified topic.¹ You state you have released some information. You state you do not have information responsive to portions of the request.² You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.³ We have also received and considered comments submitted by the requestor. *See*

¹We note the district sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The 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. *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), 452 at 3 (1986), 362 at 2 (1983).

³While you raise section 552.101 of the Government Code, you do not provide any arguments to support your assertion. Consequently, we understand you to have withdrawn your assertion of section 552.101 of the Government Code and therefore do not address the applicability of that exception to the information at

Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the exception you claim and reviewed the submitted representative sample of information.⁴

We note the district has redacted portions of the submitted information.⁵ Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue or has statutory authorization to withhold the information without requesting a decision under the Act. *See* Gov't Code § 552.301(a), (e)(1)(D). However, the district does not assert, nor does our review of our records indicate, the district is authorized to withhold the redacted information at issue without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000) (previous determinations). Therefore, this type of information must be submitted in a manner that enables this office to determine whether it falls within the scope of an exception to disclosure. As of the date of this letter, you have failed to submit the responsive information in a manner that enables this office to determine whether it falls within the scope of an exception to disclosure. Consequently, we find the district failed to comply with the requirements of section 552.301(e) in requesting this decision from our office.

A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a governmental body demonstrates a compelling reason to withhold 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 (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. 319 (1982). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). While you raise

issue. *See* Gov't Code §§ 552.301, .302.

⁴ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

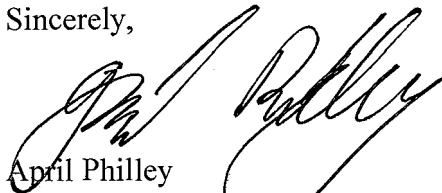
⁵ You inform us that this information was not submitted because it is confidential under the attorney-client privilege and may not be disclosed. We note, however, that section 552.3035 expressly prohibits this office from disclosing information that is the subject of a request for an attorney general decision. *See* Gov't Code § 552.3035 (attorney general may not disclose to requestor or public any information submitted under section 552.301(e)(1)(D)). Accordingly, this office routinely receives and reviews information that governmental bodies seek to withhold under the Act.

section 552.107 of the Government Code, this section is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Accordingly, the district may not withhold the information under section 552.107 of the Government Code. Thus, we have no choice but to order the requested information be released pursuant to section 552.302 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,



April Philley
Assistant Attorney General
Open Records Division

AP/akg

Ref: ID# 635504

Enc. Submitted documents

c: Requestor
(w/o enclosures)