IN THE SUPREME COURT OF TEXAS

NO. 07-0931

CITY OF DALLAS, PETITIONER,

v.

GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS

Argued October 15, 2008

JUSTICE O'NEILL delivered the opinion of the Court in which CHIEF JUSTICE JEFFERSON, JUSTICE HECHT, JUSTICE MEDINA, JUSTICE GREEN, and JUSTICE GUZMAN joined.

JUSTICE WAINWRIGHT filed a dissenting opinion, in which JUSTICE JOHNSON joined.

JUSTICE WILLETT did not participate in the decision.

The Public Information Act mandates disclosure of public information upon request to a governmental body, but excepts certain categories of information from the disclosure requirement. *See* TEX. GOV'T CODE §§ 552.021, 552.221, 552.101–.136. A governmental body wishing to claim an exception must make a timely request for an attorney general's opinion as to the exception's applicability. *Id*. § 552.301(a). If a request is not timely made, the information is presumed subject to disclosure unless there is a compelling reason to withhold it. *Id*. § 552.302. In this case, we must decide whether the governmental body's request was timely, and, if not, whether the public policy

reasons supporting the confidentiality of attorney-client communications are sufficiently compelling to overcome the public-information presumption that applies when a governmental body fails to make a timely request. We hold that the timeliness of a request for an attorney general opinion is measured from the date a party seeking public information responds to a governmental body's good-faith request for clarification or narrowing of an unclear or overbroad information request. Accordingly, we reverse the court of appeals' judgment and render judgment that the information in the City's exhibits F and G is excepted from disclosure under the Act.

I. Background

On May 16, 2002, the City of Dallas received a Public Information Act request from James F. Hill, II, for

> 1. Any and all information pertaining to the City of Dallas "Assessment Center Process" for uniform positions of the Dallas Fire and Police Departments."
>
> 2. The definition of KG/BRG?
>
> 3. Any and all memos, directives, documents and communications of meetings of (scheduled or un-scheduled) boards, councils, department heads/staff, and City Managers pertaining to the establishment of the Assessment Center Process.

On May 22, the City responded, seeking to clarify whether Hill sought "information regarding specific assessment centers and if so for what period of time." *See id.* § 552.222(b) (allowing a governmental body to seek clarification of an unclear request). Six days later, Hill replied, clarifying his request as follows:

> The time frame and positions I am relating the request for are: the positions of Dallas Fire Rescue Fire Lieutenant and Captain for the year 2000.
>
> Additionally:
>
> * Any written documents on "how Assessment Process was to be administered" for the above positions and time frame.
>
> * Job Analysis for the positions of Fire Lieutenant and Fire Captain and date of each analysis.
>
> * Any contracts between Booth and the City of Dallas/Civil Service to conduct the Assessment Center for the Dallas Fire department positions Fire Lieutenant and Fire Captain.
>
> * An explanation on the "mirroring" of percentages between Fire Prevention and Fire Operations testing for the same time period.

In preparing to fulfill the clarified request, the City encountered several documents, identified as exhibits F and G, which it considered protected from disclosure by the attorney-client privilege. TEX. R. EVID. 503(b)(1); TEX. GOV'T CODE § 552.107(1). On June 10, 2002, the City requested an attorney general opinion regarding application of the privilege to the withheld documents. TEX. GOV'T CODE § 552.301(a). The Attorney General concluded that the City's request was untimely. *See id.* § 552.301(b) (requiring a governmental body to request an attorney general decision "not later than the 10th business day after receiving the written request" when seeking to withhold information). According to the Attorney General, the ten-day clock began to run on May 16 when the City received Hill's first request, and the City's May 22 response seeking clarification merely tolled the ten-day clock until Hill's second letter was received on May 28. *See* Tex. Att'y Gen. ORD-663 (1999). With the clock tolled until May 29, the City had until June 6 to request an

attorney general decision, according to the Attorney General's calculations.[1] Because the City did not submit its request until four days later, on June 10, the Attorney General determined the City's request was untimely. As a result, the Attorney General explained, a legal presumption arose that exhibits F and G were public, and the City could only overcome that presumption by demonstrating a compelling reason to withhold the documents. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Considering the attorney-client privilege a discretionary exception subject to waiver, the Attorney General concluded that a compelling reason to overcome the public-information presumption had not been presented.

The City brought this suit seeking a declaratory judgment that exhibits F and G are protected from public disclosure by the attorney-client privilege.[2] *See* TEX. GOV'T CODE §§ 552.324, 552.325; *In re City of Georgetown*, 53 S.W.3d 328, 330 (Tex. 2001). At trial, the City argued that its request for an attorney general decision was timely because the ten-day response period under section 552.301(d) did not begin to run until Hill clarified his request. Alternatively, the City contended the public policy reasons that support the attorney-client privilege are sufficiently compelling to overcome the public-information presumption. After a bench trial, the trial court — initially assuming the privileged nature of the documents and later confirming, *in camera*, the privilege under Texas Rule of Evidence 503(b)(1) — rejected both arguments and ordered that the documents be

[1] It appears that the Attorney General excluded the dates of the City's clarification request and Hill's response, as well as two intervening weekends and Memorial Day (May 27) in calculating that response deadline.

[2] The City also sought a writ of mandamus ordering the Attorney General to declare the documents excepted from public disclosure. Absent express statutory authority providing otherwise, "[o]nly the supreme court has the authority to issue a writ of mandamus . . . against [the Attorney General]". *See A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 672 (Tex. 1995) (citing TEX. GOV'T CODE § 22.002(c)). Because the City requested only declaratory relief in its prayer, we will address our attention only to that issue.

disclosed. The court of appeals affirmed. 279 S.W.3d 806, 808. We granted the City's petition for review to consider the Act's application under the circumstances presented. 51 Tex. S. Ct. J. 1076 (Tex. June 27, 2008).[3]

II. Discussion

We first consider the timeliness of the City's request for an attorney general opinion. A governmental entity that believes information requested under the Public Information Act is excepted from disclosure must ask for an attorney general's opinion no later than the tenth business day after it receives the request. TEX. GOV'T CODE § 552.301(b). But, "[i]f what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request." *Id.* § 552.222(b). Further, "[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed . . . ." *Id.* We must decide what effect a request for clarification or narrowing has on the ten-day deadline. Section 552.222(b) is silent on this issue.

The City contends the ten-day period should be measured from the date the party seeking public information clarifies or narrows the request. It maintains that Hill's original letter was so broad that it did not put the City on notice that he was requesting the information in exhibits F and G. The City notes that section 552.301(b) requires a governmental body seeking a ruling that information is excepted from disclosure to "state the exceptions that apply within a reasonable time

[3] We have received *amicus curiae* briefs supporting the City from the Texas Association of Counties and, jointly, the Texas Association of School Boards Legal Assistance Fund, Texas Municipal League, and the Texas City Attorneys Association. The Freedom of Information Foundation of Texas, the Texas Association of Broadcasters, and the Texas Daily Newspaper Association filed a joint brief in support of the Attorney General, as did Senator John Cornyn.

but not later than the 10th business day after the date of receiving the written request." According to the City, a governmental body cannot reasonably comply with that obligation if the request is unclear or overbroad.

Relying on a 1999 open records decision, Open Records Decision No. 663, the Attorney General contends the ten-day deadline for the City to request a ruling under section 552.301(b) was merely tolled during the period the City was waiting for a response from Hill, and did not reset once the City received Hill's clarification. According to the Attorney General, such a construction is necessary to ensure that governmental bodies comply with their duty to respond promptly to requests for public information. *See* TEX. GOV'T CODE § 552.221(a). If the ten-day period were reset rather than tolled by a clarification request, the Attorney General argues, governmental bodies could extend the deadline to respond to a public information request indefinitely by repeatedly requesting clarification. The Attorney General maintains that a conclusion that a clarification request restarts the statutory deadline would be contrary to the Act's directive that its provisions are to be "construed in favor of granting a request for information." *Id.* § 552.001(b).

Our task in construing a statute is to give effect to the Legislature's intent in enacting it. *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001). Ordinarily, we are confined to the statute's plain language. *Id.* (citing *Morrison v. Chan*, 699 S.W.2d 205, 208 (Tex. 1985)). However, when a provision is silent as to its consequences as it is here, we look to the statute as a whole and strive to give it a meaning that is in harmony with other provisions. *Id.* (citing *Barr v. Bernhard*, 562 S.W.2d 844, 849 (Tex.1978)). We presume that the Legislature intended all provisions of a statute to be effective, and that it intended a just and reasonable result. *Id*. (citing TEX. GOV'T CODE

§ 311.021(2), (3)). While the Attorney General's interpretation of the Act may be persuasive, it is not controlling. *Holmes v. Morales*, 924 S.W.2d 920, 924 (Tex. 1996). In this instance, we conclude that the Attorney General's interpretation of section 552.222(b) is inconsistent with other provisions of the Act. Reading section 552.222(b) in harmony with those provisions, we hold that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general opinion is measured from the date the request is clarified or narrowed.

A. Other Provisions of the Act

The Legislature has clearly expressed an intent that governmental entities respond promptly to requests for public information. TEX. GOV'T CODE § 552.221(a). But, as the Attorney General has acknowledged, while the Act prohibits

> "unreasonable delays in providing public information, [it also] recogniz[es] that the functions of the governmental body must be allowed to continue. The interests of one person requesting information under the Open Records Act [now Public Information Act] must be balanced with the interests of all the members of the public who rely on the functions of the governmental body in question."

Tex. Att'y Gen. ORD-664, 3 (2000) (quoting Tex. Att'y Gen. ORD-467, 6 (1987)). And while the Act's fundamental purpose is to mandate the maximum disclosure of public information, it was also designed "to simultaneously protect the personal privacy of individuals." House Comm. on State Affairs, Bill Analysis, Tex. H.B. 1718, 74th Leg., R.S. (1995); *see*, *e.g.,* TEX. GOV'T CODE §§ 552.102, .109, .114, .115, .117. According to the House Research Organization, as of 2007, some Texas agencies received as many as 2,000 Public Information Act requests a year, House Research Org. Bill Analysis, Tex. H.B. 1497, House Committee Report, 80th Leg., R.S. (2007), and officials

responding to those requests bear an onerous responsibility: if they disclose information that is confidential under the Act, they face criminal liability. TEX. GOV'T CODE § 552.352(a).[4] Moreover, public entities requesting an attorney general opinion must specify the exceptions that apply within the same ten-day period in which an opinion must be requested. *Id.* § 552.301(b). As the Attorney General has observed, the requirements to request an opinion and specify the applicable exceptions "presuppose[] that the governmental body has identified the responsive information." Tex. Att'y Gen. ORD-664, at 4 fn.2. In light of those considerations, it is reasonable to assume that the Legislature intended that public entities would have a reasonably clear idea of the information requested before the ten-day deadline begins to run.

Other provisions of the Act also weigh in favor of measuring the statutory deadline from the date an unclear or overbroad request has been clarified or narrowed. The Act permits governmental entities to impose charges for the cost of copying records, and, in certain circumstances, preparing them for inspection. TEX. GOV'T CODE §§ 552.261, .271. The governmental body must provide the person requesting information with a detailed statement itemizing all the estimated anticipated costs of complying with the request. *Id.* § 552.2615(a). If the person requesting the information does not respond to the estimate within ten business days by accepting the estimate, modifying their request, or filing a complaint with the Attorney General alleging that the governmental entity is overcharging, the request is considered withdrawn. *Id.* § 552.2615(b). A public information officer may require a deposit or payment of a bond if the estimated costs of preparing copies will exceed $100 (for

[4] Officials who wrongfully withhold public information may also face criminal sanctions, but only if they act with criminal negligence. Tex. Gov't Code § 552.353(a).

bodies with more than fifteen employees) or $50 (for entities with fewer than sixteen employees). *Id.* § 552.263(a). If a deposit or bond is required, then, for purposes of section 552.301, the request is not considered received until the entity receives the deposit or bond. *Id.* 552.263(e). This provision belies the Attorney General's contention that section 552.301's ten-day deadline is "absolute," and signals the Legislature's recognition of the potential burden responding to public information requests may place on governmental bodies. *See* Senate Research Ctr., Bill Analysis, Tex. S.B. 623, 79th Leg., R.S., 2005 ("The time and resources used in the preparation of a brief to the attorney general are not reimbursed to the governmental entity, which creates a problem when a requestor is authorized to force a governmental entity to prepare briefs for the attorney general, before payments have been made.")

None of these provisions specifically addresses the effect of a clarification request.[5] But they suggest that the Legislature envisioned an orderly process in which both the government and the requesting party will proceed with a reasonable idea of the burdens and costs each is likely to incur in connection with a request for public information. If a request is unclear or overbroad, the government's ability to identify applicable statutory exceptions to disclosure, or to prepare an accurate estimate of anticipated costs, is severely hampered; if the statutory ten-day period is merely tolled while the government awaits clarification, the government is left with little time to assess applicable exceptions or prepare any estimate of costs, a result that could leave both parties with less accurate information. While the Act requires governmental entities to respond promptly to public

[5] The latter provision would not apply to Hill's request as it did not become effective until 2005. *See* Act of May 27, 2005, 79th Leg., R.S., ch. 315, §§ 2, 3 2005 Tex. Gen. Laws 938. Nevertheless, the Legislature's willingness to extend the statutory deadline until a deposit or bond is paid is suggestive.

information requests, "'promptly' means as soon as possible under the circumstances, that is, within a reasonable time, without delay." *Id.* § 552.221(a). If the circumstances are that a request is so unclear or overbroad that a governmental entity, acting in good faith, cannot understand what is requested, then it is consistent with the Act's structure to measure the time period in which an attorney general opinion must be requested from the date the request is clarified.

The regulatory background against which section 552.222(b) was enacted reinforces our construction of the statute. More than a decade before the Legislature enacted the clarification statute, the Attorney General had issued Open Records Decision 333, a decision that has never been withdrawn or overruled.[6] In that decision, the City of Houston received a request from the Houston Chronicle for "access to blotters maintained by all divisions of the Houston Police Department." Tex. Att'y Gen. ORD-333, 1 (1982). The newspaper relied on a decision holding that police blotters were public information, *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *Id.* The City disagreed because, broadly read, the Chronicle's request included the identities of police

[6] The Attorney General does not contend that the City's request for clarification was pretextual, and the City maintains that it was unaware Hill was seeking the information in exhibits F and G until it received that clarification. Open Records Decision No. 663, on which the Attorney General relied in this case, reads Open Records Decision No. 333 to apply when the responding entity "did not understand the nature of the information requested as information which could be protected from disclosure until the day [it] received the clarification." Tex. Att'y Gen. ORD-663, at 3. Although the original request in Open Records Decision No. 333 was couched in broad terms, Open Records Decision No. 663 concluded that the clarified request became the operative request because it "included excepted information not sought in the original request." *Id.* at 3. It then articulated the tolling rule that the Attorney General advocates in this case. *Id.* at 4. Ultimately, however, in Open Records Decision No. 663, the Attorney General ruled that a request for information containing certain search terms did not initiate the ten-day period in which to seek an attorney general's opinion about documents containing those terms that were in the possession of the agency's outside counsel, even though those documents were clearly public information. *Id.* at 6. The Attorney General did "not believe that the first request, which did not specify information held by [the agency's] outside counsel, served to notify [the agency] that the requestor was seeking information held not only by [the agency], but also by its counsel." *Id.*

informants. *Id.* The Chronicle and the City then engaged in a series of verbal and written exchanges in which the City sought to clarify the precise information the newspaper sought. *Id*. As a consequence of these efforts, more than ten days elapsed between the Chronicle's original request and the date the City requested an attorney general open records decision. *Id*. at 2. Because the original request was "extremely broad, and referred only to 'blotters'," the Attorney General concluded that a letter from the Chronicle precisely identifying the information it sought was the operative date to trigger the ten-day period, even though the Act contained no provision allowing a governmental entity to attempt to clarify or narrow a request. *Id*. at 2–3. Presumptively, the Legislature was aware of this opinion when it enacted section 552.222(b) in 1995. *See Tex. Dept. of Prot. & Reg. Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 176 (Tex. 2004). While the opinion was not based on any explicit clarification provision, it did provide the Legislature with the view of the officer in charge of enforcing the Act that measuring a governmental body's response time from the date an unclear or overbroad information request is clarified would be consistent with the Act's overarching purposes. It is not unreasonable to assume that the Legislature anticipated that section 552.222(b) would have the same effect on the ten-day deadline.

Construing the statute so that clarification of an unclear or overbroad information request resets the statutory ten-day deadline would not be contrary to the Legislature's mandate that the Act be construed in favor of granting a request. TEX. GOV'T CODE § 552.001(b). To the contrary, as we have observed, allowing a governmental entity ten days from the time an unclear or overbroad request is clarified only helps ensure that the response will be meaningful, providing the requestor with the information he or she actually wants. As the Attorney General has recognized, if a request

is vague or overbroad, a governmental body cannot "accurately identify and locate the requested items." Office of the Attorney General of Texas, PUBLIC INFORMATION 2008 HANDBOOK, ix. And, in sections 552.263 and 552.2615 of the Act, the Legislature itself has attempted to balance the policy of broad disclosure against the burden that may be placed upon scarce government resources in attempting to respond to extremely broad information requests.

We agree with the Attorney General that a governmental entity should not be allowed to use requests for clarification in bad faith merely to delay production of public information. But in this case, it is undisputed that the City acted in good faith in asking Hill to clarify or narrow his broad request for public information. Once he did, the City promptly responded. There is nothing to indicate that the City was attempting to drag out the process by its request for clarification. Under these circumstances, the ten-day period for requesting an attorney general opinion ran from the date of Hill's response, and the City's request for an attorney general opinion was timely. Because we conclude that the ten-day period in this case ran from the date of Hill's clarification, we do not reach the City's argument that Hill's response asked for "additional items" that were not included in his original request, or its alternative argument that the attorney-client privilege is itself sufficiently compelling to overcome the public-information presumption that inheres when an attorney general's opinion is not timely requested.

III. Conclusion

We reverse the court of appeals' judgment and render judgment that the information contained in exhibits F and G is excepted from disclosure under the Act.

_____
Harriet O'Neill
Justice

OPINION DELIVERED: February 19, 2010