



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2007

Ms. Diana L. Granger
Knight & Partners
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2007-16974

Dear Ms. Granger:

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# 298332.

The City of Leander (the "city"), which you represent, received a request for all forms of communication exchanged between the mayor, city manager, city attorney, city planning departments, city engineers, public works staff, and city council regarding four categories of information. You indicate that you will release a portion of the responsive information. You claim that the remaining information is excepted from disclosure under sections 552.107 and 552.137 of the Government Code. We have considered your representations.

We must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). The city received the request for information on October 3, 2007, but as of the date of this letter, has not submitted a copy of the specific information requested or representative samples of it. Furthermore, you indicate that the city sought clarification of a portion of the request. *See id.* § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request). However, you have not informed us of the date on which the city requested clarification. Since we are unable to calculate whether or to what extent the deadlines

mandated by section 552.301 have been tolled, we find that the city failed to comply with the procedural requirements of section 552.301 in requesting this decision from our office. *See* Open Records Decision No. 663 (1999) (request for clarification does not trigger a new ten business daytime interval, but merely tolls the ten day deadline during the clarification or narrowing process, which resumes upon receipt of the clarification or narrowing response).

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). Normally, a compelling interest exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the city has failed to comply with the procedural requirements of the Act, the city has waived section 552.107 of the Government Code, which is a discretionary exception. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for a decision resulted in waiver of discretionary exceptions), 630 at 4-5 (1994) (governmental body may waive statutory predecessor to section 552.107). Further, although the city also raises section 552.137 of the Government Code, which is a mandatory exception to disclosure that may not be waived, the city has not submitted any information for our review. Therefore, we have no basis for finding any information confidential. Thus, we have no choice but to order the city to release the requested information. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/ma

Ref: ID# 298332

Enc. Submitted documents

c: Ms. Judi Graci
15775 Booth Circle
Volente, Texas 78641
(w/o enclosures)