



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2008

Mr. Thomas B. Scollon
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
I-30 At Bryant-Irvin Road
600 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2008-05282

Dear Mr. Scollon:

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# 308062.

The City of Haltom City (the "city"), which you represent, received a request for five categories of information pertaining to the installation of a natural gas pipeline project. You state that you have released a portion of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.105 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code. We understand you to contend that, because the city provided the requestor with an estimate of charges for responding to the request and the city required a deposit or bond in this instance, the city's deadlines under section 552.301 were tolled until the city received the deposit or bond from the requestor. Thus, we understand you to argue that the city's deadlines under section 552.301 were tolled pursuant to section 552.263 of the Government Code. *See* Gov't Code § 552.263(e) (providing that for the purposes of Subchapters F and G of the Act, a request for a copy of public information is considered to have been received by a governmental body on the date the governmental body receives the deposit or bond for payment of anticipated costs). However, we note that section 552.263(a) provides in relevant part that a governmental body "may require a deposit or bond for payment of anticipated costs . . . if [the governmental body] has provided the requestor with the required *written itemized statement* detailing the estimated charge for providing the copy

and if the charge" is estimated to exceed \$100, if the governmental body has more than 15 full-time employees or \$50, if the governmental body has fewer than 16 full-time employees. *Id.* § 552.263(a) (emphasis added). Thus, a governmental body may require a deposit or bond only if it has provided the requestor with the required written itemized statement. The requirements of the written itemized statement referred to in section 552.263 are found in section 552.2165 of the Government Code.

Section 552.2615 requires a governmental body to provide a requestor with an estimate of charges when a request to inspect a paper record will result in the imposition of a charge that will exceed forty dollars. *See id.* § 552.2615. Under section 552.2615, a governmental body is required to inform the requestor of the duties imposed on him by this section and provide the requestor the information needed to respond. *Id.* Section 552.2615 of the Government Code provides in part:

(a) [T]he governmental body must inform the requestor of the responsibilities imposed on the requestor by this section and of the rights granted by this entire section and give the requestor the information needed to respond, including:

(1) that the requestor must provide the governmental body with a mailing, facsimile transmission, or electronic mail address to receive the itemized statement and that it is the requestor's choice which type of address to provide;

(2) that the request is considered automatically withdrawn if the requestor does not respond in writing to the itemized statement and any updated itemized statement in the time and manner required by this section; and

(3) that the requestor may respond to the statement by delivering the written response to the governmental body by mail, in person, by facsimile transmission if the governmental body is capable of receiving documents transmitted in that manner, or by electronic mail if the governmental body has an electronic mail address.

(b) A request . . . is considered to have been withdrawn by the requestor if the requestor does not respond in writing to the itemized statement by informing the governmental body within 10 days after the date the statement is sent to the requestor that

(1) the requestor will accept the estimated charge;

(2) the requestor is modifying the request in response to the itemized statement; or

(3) the requestor has sent to the attorney general a complaint alleging that the requestor has been overcharged for being provided with a copy of public information.

Gov't Code § 552.2615(a), (b). We have examined the cost estimate the city provided to the requestor, and note that in this instance the city did not inform the requestor of his rights and responsibilities under sections 552.2615(a) and (b). We therefore find that the city failed to meet the requirements of section 552.2615 in providing the required written itemized statement. Because the required written itemized statement was defective under section 552.2615, the city may not require a deposit or a bond of the requestor. Therefore, the city's deadlines under section 552.301 were not tolled under section 552.263. Furthermore, the provision of an itemized estimate of charges to a requestor under section 552.2615 does not excuse a governmental body from complying with its deadlines under section 552.301. *See id.* § 552.2615(g) (deadlines imposed by section 552.2615 do not affect application of time deadline imposed on governmental body under subchapter G of the Government Code). Accordingly, the city's deadlines under section 552.301 were not tolled.

Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Additionally, under 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) 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. *Id.* § 552.301(b), (e)(1)(A)-(D). You state that the city received the request for information on January 15, 2008. Thus, the city was required to request a decision from this office no later than January 30, 2008, and to submit the required information by February 6, 2008. The city did not request a decision from this office until February 13, 2008. Consequently, the city failed to request a decision within the ten-business-day period mandated by section 552.301(b) of the Government Code. Additionally, you did not provide this office with the required documents within the fifteen-business-day period mandated by section 552.301(e) of the Government Code. Based on the foregoing, we conclude that the city failed to comply with section 552.301.

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 information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to

overcome this presumption. *Id.* § 552.302; *see also 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); Open Records Decision No. 319 (1982). Generally speaking, 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. Open Records Decision No. 150 at 2 (1977). Although you seek to withhold the submitted information under sections 552.105 and 552.107 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; 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 (discretionary exceptions generally), 564 (1990) (governmental body may waive statutory predecessor to Gov't Code § 552.105). As such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. In failing to comply with section 552.301, the city has waived its claims under sections 552.105 and 552.107, and it may not withhold any of the submitted information on those grounds. We note that some of the submitted information may be subject to section 552.137 of the Government Code. Because this section can provide a compelling reason to withhold information, we will determine whether any of the submitted information is excepted from disclosure under this exception.¹

Section 552.137 makes certain e-mail addresses confidential, providing the following:

- (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.
- (c) Subsection (a) does not apply to an e-mail address:
 - (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
 - (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

¹The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137 (b). The types of e-mail addresses listed in section 552.137 (c) may not be withheld under section 552.137. Likewise, this section is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We also note that the requestor has a right of access to his own e-mail address. *Id.* § 552.023 (person or person's authorized representative has special right of access to information relating to person and protected from public disclosure by laws intended to protect that person's privacy interest). Therefore, the city must withhold any personal e-mail addresses, other than the requestor's, under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure. However, to the extent that any of the personal e-mail addresses belong to employees of entities with which the city has contractual relationships, or fall under any of the other exceptions listed under subsection 552.137(c), the e-mail addresses may not be withheld under section 552.137.

In summary, to the extent that the e-mail addresses contained in the submitted information are not excluded by subsection (c), they must be withheld under section 552.137 of the Government Code, unless the city receives consent for their release. The remaining information must be released.

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# 308062

Enc. Submitted documents

c: Mr. Kevin Strawser
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(w/o enclosures)