



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2009

Mr. George Hyde
Denton, Navarro, Rocha & Bernal
Attorney for City of Windcrest
2517 North Main Avenue
San Antonio, Texas 78212

OR2009-05667

Dear Mr. Hyde:

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# 341310.

The City of Windcrest (the "city"), which you represent, received a request for all reports generated from calls made to a specified address during a specified time period. You assert the requested information is not subject to the Act. You also claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.104, 552.105, 552.107, 552.108, 552.109, 552.110, 552.111, 552.113, 552.116, 552.117, 552.1175, 552.122, 552.128, 552.129, 552.130, 552.131, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim.

Initially, we address your assertion that the requested information is not subject to the Act. The Act is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); see also Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). In this instance, you do not present any arguments supporting your assertion that the requested information is not public

information. Further, the request was for "all reports generated from calls made to [the specified address] for the years 2006 thru 2008." The request reflects that any responsive information would be collected and maintained by the city in connection with the transaction of official business of the city, and thus, would be public information as defined by section 552.002. *See* Gov't Code § 552.002(a). Therefore, the requested information is subject to the Act and may only be withheld if it is excepted from disclosure under the Act.

Next, we must address the city's obligations under the Act. Pursuant to section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the 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(e)(1)(A)-(D). You inform us that the city received this request on February 5, 2009. Thus, the fifteen day deadline to comply with section 552.301(e) was February 27, 2009. As of the date of this letter, you have not submitted to this office written comments stating the reasons why the exceptions you have raised would allow the information to be withheld, nor have you provided a copy or representative sample of the information requested. Consequently, we find that the city failed to comply with the procedural requirements of 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 requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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); 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). In failing to comply with the procedural requirements of section 552.301, you have waived the discretionary exceptions you raised. *See* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Accordingly, the requested information may not be withheld on any of these bases. Furthermore, by failing to submit any information for our review, we have no basis for finding it confidential under the claimed mandatory exceptions. Thus, we have no choice but to order you to release the responsive information in accordance with section 552.302 of the Government Code. 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/rl

Ref: ID# 341310

Enc. Submitted documents

c: Requestor
(w/o enclosures)