



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2009

Judge Joel Rodriguez
County Judge for LaSalle County
707 Buckley Street
Cotulla, Texas 78014

OR2009-10849

Dear Judge Rodriguez:

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# 351386.

LaSalle County (the "county") received a request for: (1) all contracts and communications between a specified person, or business entities involving this person, and County Judge Joel Rodriguez, the county, and/or the county's Public Facilities Corporation; and (2) all correspondence from Judge Rodriguez that refers to the same specified person or two specified business entities. You state that the county does not maintain information responsive to certain aspects of the request.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the requested information.² We have also considered

¹We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *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), 452 at 3 (1986), 362 at 2 (1983).

²We 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.

comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the county's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. The submitted information reflects that the county received the request for information on May 14, 2009; however, your request for a ruling from this office was not postmarked until June 1, 2009.³ *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find you have failed to comply with the 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; the governmental body can overcome this presumption only by demonstrating a compelling reason 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); Open Records Decision No. 319 (1982). A compelling reason generally exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You claim exceptions to disclosure under sections 552.103 and 552.107 of the Government Code, both of which are discretionary exceptions that protect a governmental body's interests and which may be waived. *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 section 552.103); Open Records Decision Nos. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason to withhold information under section 552.302 if disclosure does not implicate third-party rights), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, your claims under sections 552.103 and 552.107 do not provide a compelling reason for non-disclosure, and the county may not withhold any

³Section 552.301(e)(1)(C) of the Government Code states that the governmental body requesting a ruling must "submit to the attorney general . . . a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date[.]" Gov't Code § 552.301(e)(1)(C). We note that your request for a ruling refers to "Open Records Request by [requestor], dated Joel, to LaSalle County Judge Joel Rodriguez" and later states that this request was "dated July 8, 2008." However, the cover page for Tab A of your submission refers to "Request for Records May 14, 2009." This is also the date on the submitted written request from the requestor. Accordingly, in the absence of an affirmative statement from the county proving otherwise, the submitted information reflects that the county received this request on May 14, 2009. The ten business day deadline for submission of the county's request for a ruling was therefore May 29, 2009.

portion of the submitted information under those exceptions. You also raise section 552.101 of the Government Code, which is a mandatory exception that can provide a compelling reason for non-disclosure. Therefore, we will consider your argument under section 552.101. We will also consider whether section 552.137 of the Government Code, which is also a mandatory exception, excepts any of the information at issue from disclosure.⁴

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 in conjunction with section 551.104 of the Government Code, which provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 at 4 (1988). Accordingly, the county must withhold any responsive certified agenda or tape of a closed meeting under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.⁵

We note that section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection 552.137(c). *See* Gov't Code § 552.137(a)-(c). Subsection 552.137(c)(1) states that subsection 552.137(a) does not apply to an e-mail address "provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent" and subsection 552.137(c)(2) states that subsection 552.137(a) does not apply to an e-mail address "provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent[.]" *Id.* § 552.137(c)(1), (2). You do not indicate that any of the involved parties have consented to release of their information. Therefore, the county must withhold the e-mail addresses we have marked under section 552.137, except the county must release any such e-mail addresses that belong to employees of vendors who either have or are seeking a contractual relationship with the county. As you

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

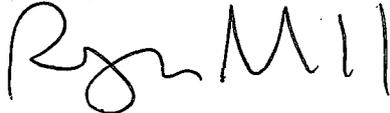
⁵We note that a governmental body is not required to submit a certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code).

raise no further exceptions against disclosure, the county must release the remainder of the information at issue.⁶

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 351386

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

⁶We note that the submitted e-mails include designs or other brand features that appear to be copyrighted by the e-mail service provider. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).