



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 6, 2009

Ms. Jacqueline Cullom Murphy  
Assistant Criminal District Attorney  
Bexar County, Texas  
Cadena-Reeves Justice Center  
300 Dolorosa, Fifth Floor  
San Antonio, Texas 78205-3030

OR2009-10947

Dear Ms. Murphy:

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# 351351.

The Bexar County Tax Assessor-Collector (the "assessor-collector") received a request for the bonds issued on the assessor-collector's behalf for a specified time period. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

The requestor contends that the assessor-collector is in violation of the procedural requirements of the Act. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301 states in pertinent part:

(d) A governmental body that requests an attorney general decision must provide to the requestor, not later than the 10th business day after the date of its receipt of the written request for information:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for an attorney general decision about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

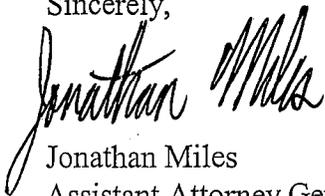
*Id.* § 552.301(d). The requestor contends that the assessor-collector did not provide him with a copy of its request for ruling, which the assessor-collector sent to this office on June 3, 2009. However, the assessor-collector asserts that it provided a copy of its request for ruling to the requestor on June 4, 2009, via facsimile, and has included a copy of that facsimile in its brief. However, we note that the facsimile provided to us as proof that the assessor-collector informed the requestor of its request for ruling includes an error message which indicates that no pages were actually sent to the requestor. Further, we have no indication that the assessor-collector sent a subsequent facsimile indicating that it was seeking a ruling from this office to the requestor within the requisite period. Consequently, we find that the assessor-collector 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 submit to this office the information required in section 552.301(d) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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 of the Government Code); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See Open Records Decision No. 630* (1994). Because the assessor-collector has failed to comply with the requirements of the Act, the assessor-collector has waived its claim under section 552.103, which is a discretionary exception to disclosure. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). We, therefore, conclude the assessor-collector must release the requested information to the requestor pursuant to section 552.302.

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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/cc

Ref: ID# 351351

Enc. Submitted documents

c: Requestor  
(w/o enclosures)