



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 14, 2009

Mr. Art Pertile, III
Olson & Olson, LLP
Attorney for City of Brookshire
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, Texas 77019

OR2009-11361

Dear Mr. Pertile:

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# 352262 (COB# 09-002).

The City of Brookshire (the "city"), which you represent, received a request for the city budget for four specified years, all agreements between the city and Public Management, Inc. over a specified time period, and seven categories of information pertaining to the Texas Department of Housing and Community Affairs. You claim the requested information is excepted from disclosure under sections 552.101 through 552.148 of the Government Code. We have considered the exceptions you claim.

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires a governmental body 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. *See id.* § 552.301(e)(1)(A)-(D). You inform us that the city received this request on June 2, 2009. However, as of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, nor have you submitted a copy

or representative sample of the information requested. Consequently, we find that the city 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 submit to this office the information required in section 552.301(e) results in the legal presumption that the 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); Open Records Decision No. 319 (1982). Normally, 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. *See* Open Records Decision No. 150 at 2 (1977). You assert the requested information is excepted from disclosure under sections 552.101 through 552.148. In failing to comply with the requirements of section 552.301, you have waived the discretionary exceptions you raised. *See* Open Records Decision Nos. 522 (1989) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the requested information may not be withheld under any of the claimed discretionary exceptions. Furthermore, by failing to submit any information for our review, we have no basis for finding it confidential under the claimed mandatory exceptions. Therefore, we have no choice but to order you to release the requested information to the requestor.

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 352262

Enc. Submitted documents

c: Requestor
(w/o enclosures)