



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2009

Mr. Michael S. Copeland
Utility Attorney
City of Denton
215 East McKinney Street
Denton, Texas 76201

OR2009-13759

Dear Mr. Copeland:

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# 356899.

The City of Denton (the "city") received a request for alarm logs and other records that contain any information about spills, main break events, alarms, or crew responses that: (1) relate to the city's Grissom Road lift station or to sewer lines connected to that lift station and (2) were not the result of rain events. You claim the requested records are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim.

Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). You have not marked any submitted documents as responsive to this request, or indicated they are excepted under section 552.103. It appears instead the documents were submitted to this office to establish the city's claims under section 552.103 of the Government Code. The submitted documents pertain to prior information requests sent to the city. Attached to the correspondence are records and reports the city has previously released in response to those prior requests. Even if we assume these attachments are responsive to the current request, the Act does not permit the selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Therefore, the city cannot withhold from this requestor any responsive reports that were previously released and

are attached to the submitted correspondence. Because it does not appear the city has submitted any responsive information for our review, we conclude the city failed to comply with the procedural requirements mandated by 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 the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.*: § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and 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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). In failing to comply with section 552.301, the city has waived its claim under section 552.103 and may not withhold any of the requested information on that basis. As you raise no other exceptions to disclosure, the responsive information must be released in its entirety.

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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 356899

Enc. Submitted documents

cc: Requestor
(w/o enclosures)