



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2010

Mr. Jaime J. Munoz
Law Office of Jaime J. Munoz
Attorney for City of San Juan
P.O. Box 47
San Juan, Texas 78589

OR2010-01287

Dear Mr. Munoz:

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# 368281.

The City of San Juan (the "city"), which you represent, received a request for all applications received by the city with respect to a specified position.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.147 of the Government Code. We have considered the exceptions you claim.

We must address the city's procedural obligations under the Act. 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 is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the state 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. Gov't Code § 552.301(e)(1)(A)-(D). As of this date, you have not submitted to this office a copy of the written request for information, a copy or representative sample of the information requested, or written comments stating the reasons your claimed exceptions apply to the requested information. Accordingly, we conclude the city failed to comply with the procedural requirements of section 552.301.

¹As you have not submitted a copy of the written request, we take our description from the city's brief.

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 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. See Open Records Decision No. 630 (1994). You assert the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.147 of the Government Code. In failing to comply with the procedural requirements of section 552.301, you have waived your claim under section 552.103. See Gov't Code § 552.007; *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 Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the department may not withhold the requested information under section 552.103. 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 the requested information released pursuant to section 552.302. 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, toll free, at (888) 672-6787.

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 368281

c: Requestor