



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 9, 2010

Mr. John B. Dahill  
General Counsel  
North Texas Tollway Authority  
P.O. Box 260729  
Plano, Texas 75026

OR2010-01967

Dear Mr. Dahill:

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# 369898.

The North Texas Tollway Authority (the "authority") received a request for a specified external audit, as well as all communications involving specified individuals relating to that audit.<sup>1</sup> You state you have provided the requestor with a portion of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the authority's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling

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<sup>1</sup>We note that the requestor, in part, has asked the authority to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the authority has made a good faith effort to do so.

from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, although you timely requested a ruling from this office, you did not state the exceptions that apply until after the ten-business-day deadline. Thus, we find the authority 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 requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 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, 381-82 (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); *see also* Open Records Decision No. 630 (1994). Generally, 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. Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.107 and 552.111 of the Government Code as exceptions to disclosure of the information at issue, these exceptions are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See* Open Records Decisions 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 it does not implicate third-party rights), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 630 at 4 (1994) (governmental body may waive attorney-client privilege under section 552.107(1)), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Accordingly, the authority may not withhold any of the submitted information pursuant to section 552.107 or section 552.111 of the Government Code. However, as section 552.137 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider this exception for the submitted information.<sup>2</sup>

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

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<sup>2</sup>The 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).

address is of a type specifically excluded by subsection (c).<sup>3</sup> See Gov't Code § 552.137(a)-(c). Therefore, the authority must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owner of an e-mail address has affirmatively consented to its disclosure or the e-mail address falls within the scope of section 552.137(c). See *id.* § 552.137(c)(1)-(3). To the extent that the owners of the marked e-mail addresses have consented to their release, or the e-mail addresses fall within the scope of section 552.137(c), they may not be withheld under section 552.137 and must be released. As no further exceptions to disclosure have been raised, the remaining information must be released 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](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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 369898

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.