



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 13, 2010

The Honorable Scott Morrissey
Mayor
City of Weston
P.O. Box 248
Weston, Texas 75097

OR2010-05203

Dear Mayor Morrissey:

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# 375663.

The City of Weston (the "city") received a request in which the requestor stated her present request constitutes a third attempt to receive a copy of a specified ordinance, minutes of a specified city council meeting, various pieces of information pertaining to the Pecan Creek Farms/Honey Creek Country Estates disannexation petition request, and documents pertaining to specified repairs. You state you have released some responsive information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5.¹ We have considered the exceptions you claim and reviewed the submitted information.

¹Although you also raise section 552.101 of the Government Code in conjunction with the attorney-client privilege and the attorney work product privilege, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Further, we note the proper exceptions to raise when asserting the attorney-client and attorney work product privileges for information that is not subject to section 552.022 of the Government Code are sections 552.107 and 552.111 of the Government Code. *See* Open Records Decision Nos. 677 (2002), 676 at 6. Accordingly, we will consider your arguments under sections 552.107 and 552.111 for the submitted information that is not subject to section 552.022.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the request for information because it was created after the date the city received the request of May 20, 2009. Additionally, you have marked portions of the submitted information as not responsive to this request. This ruling does not address such non-responsive information, and the city need not release it in response to this request.

Next, 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(b) of the Government Code, the governmental body must request a ruling 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). Under section 552.301(e), a governmental body must 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). Because the requestor stated her January 21, 2010 request constitutes her third attempt to obtain information from the city that was originally requested on May 20, 2009, we notified the city pursuant to section 552.303 of the Government Code that we needed additional information explaining whether the city responded to the May 20, 2009 request. *See id.* § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render a decision). In response to our request, you state the city received the requestor's original request on May 20, 2009; however, the city did not release some of the requested information because it believed this information to be protected under the attorney-client privilege. We note section 552.301(a) requires a governmental body that receives a written request for information that it wishes to withhold from public disclosure to seek a decision from the attorney general about whether the information is within an exception to disclosure under the Act. *Id.* § 552.301(a). Thus, because the city received the request on May 20, 2009 but did not request a ruling from this office or submit any of the information required by section 552.301(e) until February 3, 2010, we find 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 comply with the requirements of section 552.301 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 id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *see also* Open Records Decision No. 630 (1994). 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). Although you raise sections 552.103, 552.107, and 552.111 of the Government Code, rule 503 of the Texas Rules of Evidence, and rule 192.5 of the Texas Rules of Civil Procedure 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 *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); Open Records Decisions Nos. 676 at 12 (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 630 at 4 (governmental body may waive attorney-client privilege, section 552.107(1)), 677 at 10 (attorney work-product privilege under section 552.111 or rule 192.5 is not compelling reason to withhold information under section 552.302), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, the city may not withhold the information at issue pursuant to sections 552.103, 552.107, and 552.111 of the Government Code or rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure. 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.²

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 address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Section 552.137 also does not apply to an e-mail address “provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent[.]” *Id.* § 552.137(c)(1). The e-mail addresses we have marked do not appear to be of a type specifically excluded by section 552.137(c). Therefore, unless the city receives consent for their release, the city must withhold the e-mail addresses we have marked under section 552.137.³ The remaining information must be released.

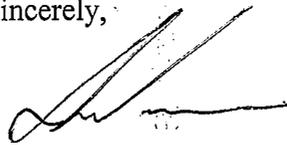
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We 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.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 375663

Enc. Submitted documents

c: Requestor
(w/o enclosures)
