



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2010

Mr. B. Chase Griffith  
Brown & Hofmeister, L.L.P.  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081

OR2010-05908

Dear Mr. Griffith:

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# 376973.

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to two specified promotional processes conducted in specified months for the town fire department. You claim that the submitted information is excepted from disclosure under sections 552.107 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the town failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. Gov't Code § 552.301(b),(e). A governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the 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). You raise section 552.107 of the Government Code which is

a discretionary exception to public disclosure that protects the governmental body's interest and may be waived. *See* Open Records Decision Nos. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 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 generally). Thus, because you have failed to comply with the procedural requirements of section 552.301, you have waived your claim under section 552.107. You contend that release of the information at issue could harm the interests of third-parties because it pertains to the actions of certain employees involved in the town fire department promotion process and that its release may result in harm to the individuals' standing within the town fire department. You also state the information at issue reveals an outside town consultant's opinions and recommendations and that release of this information would "harm his interests in confidentiality with the [t]own." The determination of whether the interests of third-parties constitute a compelling reason to withhold information under section 552.107 is made on a case-by-case basis. *See* ORD 676 at 12. Having considered your arguments, we find that you have not demonstrated the existence of a compelling reason to withhold any information under section 552.107. However, you also raise section 552.137 of the Government Code, which can provide a compelling reason to withhold information; therefore, we will address your argument under section 552.137.

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). *See* Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not the type specifically excluded by section 552.137(c). Therefore, the town must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address has consented to its release.<sup>1</sup> 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.

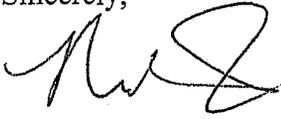
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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

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<sup>1</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 an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', written in a cursive style.

Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/jb

Ref: ID# 376973

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)