



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 20, 2010

Ms. Helen Valkavich  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2010-10752

Dear Ms. Valkavich:

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# 387267 (COSA File No. 10-0672).

The City of San Antonio (the "city") received a request for information pertaining to the city's permit database for a specified time period. You state the city will release a portion of the requested information to the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.111, 552.136, 552.137, and 552.139 of the Government Code. We have considered the exceptions you claim.

We must address the city's 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) of the Government Code, the governmental body is required to 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* Gov't Code § 552.301(e). You

state you received the request for information on May 3, 2010. However, as of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, nor have you submitted a copy or representative sample of the information requested. Consequently, 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 submit to this office the information required in section 552.301(e) results in the legal presumption 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 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 of the Government Code); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Section 552.111 of the Government Code is a discretionary exception to public disclosure that protects the governmental body's interest and may be waived. *See* Open Records Decision Nos. 663 at 5 (1999) (governmental body may waive section 552.111), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception), 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, because you have failed to comply with the requirements of section 552.301, the city has waived its claim under section 552.111. You also claim the information at issue is excepted under sections 552.136, 552.137, and 552.139 of the Government Code. Although sections 552.136, 552.137, and 552.139 can provide compelling reasons for non-disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information confidential by law. Thus, we have no choice but to order the city to release the requested information to the requestor. 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](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,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/tp

Ref: ID# 387267

Enc. Submitted documents

c: Requestor  
(w/o enclosures)