



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 4, 2010

Ms. Jill Hoffman  
Bojorquez Law Firm, PLLC  
12325 Hymeadow Drive, Suite 2-100  
Austin, Texas 78750

OR2010-16750

Dear Ms. Hoffman:

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# 399043.

The City of Mart (the "city"), which you represent, received a request for e-mails or correspondence, including bills, sent among city attorneys, city council members, the city's mayor, or city secretary pertaining to the requestor or his contract during a specified period of time.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor's attorney. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, you indicate that portions of the submitted information are not responsive to the request because they do not pertain to the matter specified by the requestor. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request. Accordingly, we will address your arguments only with regard to the responsive information.

Next, the city acknowledges, and we agree, it failed to comply with the procedural requirements of section 552.301 of the Government Code. *See id.* § 552.301. Pursuant to

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<sup>1</sup>You state the city received verbal clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

section 552.302 of the Government Code, 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. Information 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 (Tex. App.—Austin 1990, no writ); *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). You assert the requested information is excepted under sections 552.103 and 552.107 of the Government Code. These sections, however, 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); *see also* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, no portion of the responsive information may be withheld under section 552.103 or section 552.107 of the Government Code. You assert "the [c]ity's delayed response was not intentional, but rather was an unfortunate accident stemming from an abrupt and unforeseen change in personnel." However, this office has found compelling reasons sufficient to rebut the presumption of openness only in certain limited circumstances. ORD 630 at 3. As previously noted, this presumption may be overcome where the information at issue is deemed confidential by some other source of law or where the interest of a third party is at stake. *Id.* The city does not provide us with any other law that makes the information at issue confidential, nor does the city state third-party interests are at stake. Thus, the city failed to establish a compelling reason exists in this instance to overcome the presumption of openness. However, because section 552.137 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the information at issue.<sup>2</sup>

We note the responsive information contains a personal e-mail address subject to section 552.137 of the Government Code. Section 552.137 states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Therefore, the city must withhold

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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).

the marked e-mail address under section 552.137, unless the owner consents to release.<sup>3</sup> As no further exceptions to disclosure are raised, the remaining responsive 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# 399043

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>We note this office 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.