



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2011

Mr. B. Scott Osburn
Assistant City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2011-02876

Dear Mr. Osburn:

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# 410438.

The City of Killeen (the "city") received a request for "all records relating to Knife River Project." You state you have released most of the responsive information to the requestor. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

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. Gov't Code § 552.301. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). You state the city received the request for information on December 3, 2010. Accordingly, the tenth business day after the receipt of the request was December 17, 2010. Although you timely submitted your initial

¹Although you also raise section 552.108 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you have withdrawn your claim under this exception. See Gov't Code §§ 552.301, .302.

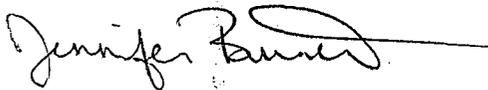
request for a decision to this office, you did not raise section 552.107 until December 28, 2010. Thus, with respect to 552.107, the city failed to comply with the procedural requirements mandated by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exception at issue, unless the 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). Although the city seeks to withhold the submitted information under section 552.107 of the Government Code, this is a discretionary exception to disclosure and does not demonstrate a compelling reason to withhold information from the public. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 663 at 5 (1999) (waiver of discretionary exceptions). Because the city failed to comply with the procedural requirements of the Act with respect to section 552.107, the city has waived its claim under this exception, and no information may be withheld on this basis. As you make no further arguments against disclosure, the submitted information must be released.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/vb

Ref: ID# 410438

Enc. Submitted documents

c: Requestor
(w/o enclosures)