



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 18, 2011

Mr. Gregory Mays  
General Counsel  
Dallas Housing Authority  
3939 North Hampton Road  
Dallas, Texas 75212

OR2011-03782

Dear Mr. Mays:

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# 411588.

The Dallas Housing Authority (the "authority") received a request for all RFP responses for agenda items 8 and 9 on the November 29, 2010 agenda and the award winning vendors for #4436 and #4437.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim.

We must address the authority's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body that receives a request for information must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). 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 id.* § 552.301(e). You state the

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<sup>1</sup>As you have not submitted a copy of the written request for information, we take our description from your brief.

authority received the request for information on December 21, 2010. We note that December 24 was a state holiday; however, you do not inform this office the authority was closed for business any additional days between December 22, 2010 and January 5, 2011. Accordingly, we find the authority's ten- and fifteen-business-day deadlines were January 5, 2011 and January 12, 2011, respectively. However, you did not request a ruling from this office and state exceptions that apply until January 6, 2011. Further, as of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, a copy of the written request for information, or a copy or representative sample of the information requested. Consequently, we find the authority failed to comply with the requirements of section 552.301.

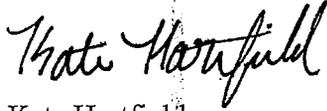
Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless 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); *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. You assert the requested information is excepted under section 552.104 of the Government Code. However, this section is discretionary in nature that serves only to protect a governmental body's interests, and may be waived. As such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 592 at 8 (1991) (statutory predecessor to section 552.104 designed to protect interests of governmental body); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Consequently, the authority may not withhold any of the requested information under section 552.104. Although the authority also raises section 552.101 of the Government Code, which is a mandatory exception to 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. We therefore conclude the authority must release the requested information to the requestor pursuant to section 552.302. 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,

A handwritten signature in cursive script that reads "Kate Hartfield".

Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 411588

c: Requestor