



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 21, 2011

Ms. Michell Hunter  
Executive Director  
State Bar of Texas  
P.O. 12487  
Austin, Texas 78711

OR2011-05559

Dear Ms. Hunter:

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# 415237.

The State Bar of Texas (the "State Bar") received a request for (1) documents sufficient to show the amount of all travel, meals, lodging, and other costs and expenses for 2010, incurred or reimbursed by the State Bar for four named individuals; (2) documents sufficient to show the amount of all travel, meal, lodging, and other expenses for 2010 incurred by the State Bar for a specified committee; (3) all e-mails sent between five named individuals during a specified time period; (4) all documents identifying legislation introduced into the Texas Legislature in connection with the current session that either mentions or refers to the State Bar or that the State Bar is tracking; and (5) all documents prepared for the State Bar board of directors regarding the proposed budget for fiscal year 2011-2012. You state, and provide documentation, that you have released information responsive to categories 1, 2, 4, and 5 of the request and some of the information responsive to category 3. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

We begin by addressing the State Bar's responsibilities under the Act. A governmental body that seeks to withhold information it believes to be within one of the Act's exceptions must ask for a decision from this office and state the exceptions that apply no later than the tenth business day after receiving a written request for information. Gov't Code § 552.301 (a), (b).

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<sup>1</sup>Although you also raise rule 503 of the Texas Rules of Evidence, we note section 552.107 is the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code. See Open Records Decision No. 676 at 1-2 (2002).

Within fifteen business days of receiving the written request, the governmental body must submit to this office: (1) general written comments stating the reasons why the asserted 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. *Id.* § 552.301(e). In this instance, you state the State Bar received the request on January 24, 2011. However, you did not seek a ruling from this office until February 15, 2011. You state you “contacted the requestor and certified that the requested emails would not be available within 10 business days of the request, but would be available on or before Tuesday, February 15, 2011.” However, the deadlines contained in section 552.301 are fixed by statute and cannot be altered by an agreement.<sup>2</sup> *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (obligations of a governmental body under predecessor to Act cannot be compromised simply by decision to enter into contract), 514 at 1–2 (1988). Therefore, the State Bar was required to seek a ruling by February 7, 2011 and was required to submit arguments, a copy of the request, evidence of the date the request was received, and the information requested or a representative sample thereof by February 14, 2011. Because the State Bar did not seek a ruling or submit any information until February 15, 2011, we find the State Bar failed to comply with the requirements of section 552.301.

A governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov’t Code § 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); Open Records Decision No. 630 (1994). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

Although you raise sections 552.103 and 552.107 of the Government Code, these exceptions 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); Open Records Decision No. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 does not provide compelling reason to withhold information

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<sup>2</sup>A governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with Act does not determine availability of information).

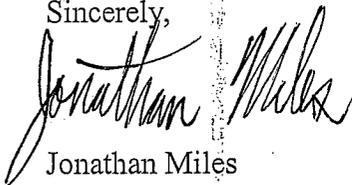
under section 552.302 if it does not implicate third-party rights); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). In failing to comply with section 552.301, the State Bar has waived its claims under sections 552.103 and 552.107 of the Government Code. Therefore, none of the submitted information may be withheld under these exceptions. However, we note some of the submitted information is subject to section 552.137 of the Government Code. Because section 552.137 of the Government Code can provide a compelling reason for non-disclosure, we will address the applicability of this exception to the submitted information.<sup>3</sup>

Section 552.137 of the Government Code provides 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 release or the e-mail address is specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). We have marked e-mail addresses that are not of the types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the State Bar must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners consent to disclosure. The remaining 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

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<sup>3</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).

Ref: ID# 415237

Enc. Submitted documents

c: Requestor  
(w/o enclosures)