



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2011

Mr. Michael K. Kallas  
Assistant Town Attorney  
Town of Westlake  
Boyle & Lowry, LLP  
4201 Wingren, Suite 108  
Irving, Texas 75062-2763

OR2011-06292

Dear Mr. Kallas:

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# 416849.

The Town of Westlake (the "town"), which you represent, received a request for sixty-four categories of information. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted a single citation report. You state this report is a representative sample of the requested information. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must submit, in connection with request for attorney general decision, the requested information or representative samples if the information is voluminous). The submitted report is not representative, however, of all of the types of information requested. This open records letter ruling applies only to the type of information you have submitted for our review. Therefore, this ruling does not address or authorize the town to withhold any

---

<sup>1</sup>You raise section 552.022 of the Government Code; however, section 552.022 is not an exception to disclosure. Rather, section 552.022 lists categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022. Furthermore, although you raise section 552.101 of the Government Code, you have not submitted arguments explaining how section 552.101 applies to the submitted information; therefore, we do not address section 552.101. *See id* §§ 552.301(e)(1)(A), .302.

other requested records that contain substantially different types of information than that submitted to this office. *See* Open Records Decision Nos. 499 (1988), 497 (1988). To the extent other types of information responsive to the request existed on the date the town received the request, we assume you have released any such information. If not, then you must do so at this time. *See id.* §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the town's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. 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). In this instance, you state the town received the request for information on February 22, 2011. Accordingly, the town's fifteen-business-day deadline was March 15, 2011. You did not, however, submit any of the information requested until March 18, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the town 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 comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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, 381-82 (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 compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You assert the submitted information is excepted under sections 552.103 and 552.108 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. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, no portion of the submitted information may be withheld under section 552.103 or section 552.108 of the

Government Code. As you raise no further exceptions to disclosure, the submitted information must be released.<sup>2</sup>

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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 416849

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

---

<sup>2</sup>We note the town would be required to withhold some of the submitted information from the general public under section 552.130 of the Government Code. Because this exception protects personal privacy, the requestor has a right of access to his client's private information under section 552.023 of the Government Code. *See* Gov't Code §552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). If the town should receive another request for this same information from an individual other than this requestor or his client, the town must again seek a ruling from this office.