



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 2, 2011

Mr. Nohl Patrick Bryant  
Law Offices of Louis T. Rosenberg  
322 Martinez Street  
San Antonio, Texas 78205

OR2011-07794

Dear Mr. Bryant:

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# 419470.

The Bexar County Emergency Services District #6 (the "district"), which you represent, received two requests from the same requestor for a specified proposed budget and a list of all assets of the district. You state the district has complied with the request for a list of assets of the district. You claim that the requested budget is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim.

We must address the district's obligations under the Act. 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 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)(1)(D), (2). You inform us that the district received this request on March 16, 2011. However, as of the date of this letter, you have not submitted to this office a copy or representative sample of the information requested. Consequently, we find the district 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 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 that the requested information is confidential under section 552.107 of the Government Code. In failing to comply with the procedural requirements of section 552.301, you have waived section 552.107, which is a discretionary exception. *See* Open Records Decision Nos. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 663 at 5 (1999) (governmental body may waive section 552.107); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Accordingly, the requested information may not be withheld under section 552.107. Thus, we have no choice but to order the requested information released 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,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/em

Ref: ID# 419470

c: Requestor