



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2011

Mr. Eric G. Burns
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 75283

OR2011-10502

Dear Mr. Burns:

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# 424925 (COSA # W000908-050311).

The City of San Antonio (the "city") received a request for all information related to a specified demolition order. You state the city will release some of the requested information. You claim the remaining requested information is excepted from disclosure under sections 552.101 through 552.147 of the Government Code. We have considered the claimed exceptions.

We must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must submit to this office, among other items, written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld and 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). In this instance, you state the city received the request for information on May 3, 2011. Accordingly, the ten-business-day deadline fell on May 17, 2011 and the fifteen-business-day deadline fell on May 24, 2011. The city's request for a decision, however, bears a post office mark reflecting it was mailed on May 19, 2011. *See id.* § 552.308(a) (ten day deadline met if request for ruling bears post office mark

indicating time within ten day period). Further, as of the date of this ruling, we have not received any written comments or any information responsive to the request for information. Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that 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). 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). In failing to comply with section 552.301, the city has waived all its claimed discretionary exceptions to disclosure. The city also raises mandatory exceptions to disclosure; however, because the city has not submitted any information for our review we have no basis to conclude any of the information is confidential by law. Therefore, we have no choice but to order the city to release the requested information pursuant to section 552.302. If you believe this 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, 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/bs

Ref: ID # 424925

Enc. Submitted documents

c: Requestor
(w/o enclosures)