



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 2, 2011

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

OR2011-11108

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# 426963.

The Dallas Housing Authority (the "authority") received a request for personnel records, disciplinary records, records of merit increases, and specified e-mail communications pertaining to the requestor's client; authority job postings published after a specified date; records evidencing pay scales between Level 1 and Level 2 supervisors; all documents regarding purchase orders at specified apartments; and copies of purchase orders from a specified time period at specified apartments. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.

Initially, we note the authority only submitted information responsive to one of the categories of the request. Although you state the authority submitted a representative sample of information, no portion of the submitted representative sample pertains to the remaining categories of information. Thus, we find the submitted information is not representative of the information sought in these portions of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this opinion does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. See Gov't Code § 552.302 (where request for attorney general decision does not

comply with requirements of section 552.301, information at issue is presumed to be public). Because you have not submitted information responsive to these portions of the request for our review, we assume you have released it. *See id.* §§ 552.301, .302. If you have not released this information, you must do so at this time. *See 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 authority's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code § 552.301(b)*. Although the authority timely submitted a request for a decision from this office, the authority did not raise any exceptions to disclosure by the ten-business-day deadline. Therefore, the authority failed to comply with the procedural requirements mandated by section 552.301(b) of the Government Code.

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(b) results in the legal presumption that 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 150 (1977). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See Open Records Decision No. 630 (1994)*. You assert the submitted information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure and may be waived. *See Gov't Code § 552.007; Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Because you have failed to comply with the procedural requirements of the Act, we find the authority has waived its claim under section 552.103, and the authority may not withhold the submitted information under that exception. As no further exceptions to disclosure are raised, the submitted information must be released to the requestor.

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 black ink, appearing to read 'Sarah Casterline', with a stylized flourish at the end.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eb

Ref: ID# 426963

Enc. Submitted documents

c: Requestor  
(w/o enclosures)