



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 2, 2011

Mr. Gary Henrichson  
Assistant City Attorney  
City of McAllen  
P.O. Box 220  
McAllen, Texas 78705-0220

OR2011-12747

Dear Mr. Henrichson:

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# 428708.

The City of McAllen (the "city") received a request for the settlement agreements, including the amount paid and any other perks that were included, for eight specified properties on Bicentennial Parkway North.<sup>1</sup> You state the city has provided some of the requested information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure. We have considered your arguments and reviewed the submitted information.

We must address the city'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 (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

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<sup>1</sup>As you have not submitted a copy of the written request for information, we take our description from your brief.

to which parts of the documents. *See id.* § 552.301(e). You state the city received the request for information on June 14, 2011. However, as of the date of this letter, the city has not submitted comments stating the reasons why the stated exceptions apply or a copy of the written request for information. Consequently, we find the city 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 governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Although you raise sections 552.103, 552.107 and 552.111 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5, these exceptions and rules 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, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under section 552.111 or rule 192.5 is not compelling reason to withhold information under section 552.302), 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 or rule 503 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 sections 552.107 and 552.111); *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 city has waived its claims under sections 552.103, 552.107 and 552.111 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5. As you claim no other exceptions to disclosure, the requested 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,

A handwritten signature in black ink, appearing to read 'Tamara Wilcox', written in a cursive style.

Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/dls

Ref: ID# 428708

Enc. Submitted documents

c: Requestor  
(w/o enclosures)