



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 27, 2011

Ms. Karen Langley
City Secretary
City of Coleman
P.O. Box 592
Coleman, Texas 76834

OR2011-14012

Dear Ms. Langley:

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# 431126.

The City of Coleman (the "city") received a request for a copy of a specified contract between the city and American Electric Power Energy Partners, Inc. ("AEPEP"). You claim that the requested information is excepted from disclosure under sections 552.110 and 552.133 of the Government Code. Additionally, you believe the requested information may implicate the interests of AEPEP. Accordingly, you state, and provide documentation demonstrating, the city notified AEPEP of the request for information and of its right to submit arguments stating why its information should not be released. *See Gov't Code* § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you claim. We have also received and considered comments submitted by AEPEP, as well as comments submitted by the requestor. *See Gov't Code* §§ 552.304 (providing that interested party may submit written comments regarding why information should or should not be released), .305.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this

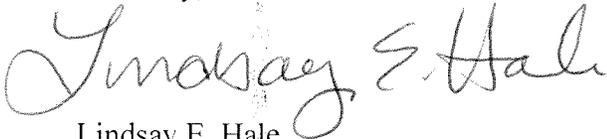
office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). In her comments submitted to this office, the requestor contends she initially requested the information on June 6, 2011, and then again on July 7, 2011. You have submitted copies of both requests to our office. Accordingly, we agree the city received the initial request for this information on June 6, 2011. Thus, the city's ten-business-day deadline was June 20, 2011. However, your request for a ruling was submitted to this office in an envelope postmarked July 20, 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). Furthermore, as of the date of this letter, you have not submitted to this office comments explaining why the city's claimed exceptions apply or a copy or representative sample of the information requested. 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 comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, orig. proceeding); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, orig. proceeding) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You raise sections 552.110 and 552.133 of the Government Code and claim there is a third party whose interests are at stake. These sections and a third party interest can provide compelling reasons to withhold information. However, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure on the basis of the city's claimed exceptions or arguments presented by AEPEP. Thus, we have no choice but to order the requested information released to the requestor pursuant to section 552.302 of the Government Code. If you believe there is a compelling reason to withhold the information, 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 431126

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)