



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2011

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-18236

Dear Mr. Griffith:

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# 438511 (PIR #1482).

The Town of Flower Mound (the "town"), which you represent, received a request for copies of billings and supporting documents for billings for legal services during a specified time period. You claim that the submitted information is privileged under Texas Rule of Evidence 503. We have considered your argument and reviewed the submitted representative sample of information.¹

We must address the town'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. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). The town received the request for information on September 15, 2011. Thus, the town's ten-business-day deadline was September 29, 2011. The envelope in which the town submitted its request for a ruling from this office, however, bears a postmark date of October 3, 2011. *See id.* § 552.308 (describing rules for calculating

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the town failed to comply with the requirements mandated by subsection 552.301(b) of the Government Code.

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, 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); 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). Although you raise Texas Rule of Evidence 503, this rule is discretionary in nature and serves to protect only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 10-12 (2002) (attorney-client privilege under section 552.107 and Texas Rule of Evidence 503 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Thus, in failing to comply with section 552.301, the town has waived its argument under Texas Rule of Evidence 503 and may not withhold the information at issue on this basis. As no further exceptions to disclosure are raised, the submitted 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, 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/ag

Ref: ID# 438511

Enc. Submitted documents

c: Requestor
(w/o enclosures)