



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2012

Mr. Samuel B. Katz
Chief Appellate Prosecutor
Comal County Criminal District Attorney
150 North Seguin, Suite 307
New Braunfels, Texas 78130

OR2012-05105

Dear Mr. Katz:

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# 450418 (Comal County File No. 12-OR-11).

The Comal County Tax Assessor-Collector's Office (the "county") received a request for a complete list of all property owned by Comal County and a signed property appraisal for a specified tract. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim.

We must address the county's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen days of receiving an open records 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 to which parts of the documents. *See* Gov't Code § 552.301(e). The county received the request for information on January 27, 2012. Accordingly, you were required to provide the information required by section 552.301(e) by February 17, 2012. However, as of the date of this letter, you have not submitted to this office a copy or representative sample of the information requested. Consequently, we conclude the county failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. Gov't Code § 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. 630 (1994). Generally, 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). You assert the requested 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 No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, your claim under section 552.103 is not a compelling reason to overcome the presumption of openness. Furthermore, by failing to submit any information for our review, we have no basis for finding any of the requested information confidential by law. Thus, we have no choice but to order the requested information released pursuant to section 552.302.

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,



Charles Galindo Jr.
Assistant Attorney General
Open Records Division

CG/em

Ref: ID# 450418

c: Requestor