



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2012

Mr. Tom McCasland
Interim Chief Executive Officer
Harris County Housing Authority
8933 Interchange
Houston, Texas 77054

OR2012-10060

Dear Mr. McCasland:

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# 457809.

The Harris County Housing Authority (the "housing authority") received a request for specified e-mails from a specified time period.¹ You state the housing authority has released some of the requested information. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.117, 552.128, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim.

We must address the housing authority's obligations under the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. 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 to which parts of the documents. Gov't Code § 552.301(e). You state the

¹As you did not submit the requestor's written request for information, we take our description from the letter you submitted to this office.

housing authority received the present request for information on April 12, 2012. Accordingly, the housing authority's fifteen-business-day deadline was May 3, 2012. However, as of the date of this letter, you have not submitted general written comments stating the reasons why the claimed exceptions apply to the information at issue, a copy of the written request for information, or a copy or representative sample of the specific information requested. Accordingly, we conclude the housing authority failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information 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. 630 (1994). Normally, 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. *See* Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.103, 552.107, 552.108, and 552.111 of the Government Code for the information at issue, these sections 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. *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. 676 at 11-12 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 6-7 (1987) (statutory predecessor to section 552.111 is discretionary exception), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, the housing authority has waived its claims under sections 552.103, 552.107, 552.108, and 552.111 and none of the information at issue may be withheld under these sections. You also raise sections 552.101, 552.117, 552.128, 552.136, and 552.137 of the Government Code, which can provide compelling reasons to withhold information. However, because the housing authority has not submitted a copy or representative sample of the specific information requested to this office for our review, we have no basis for finding it confidential by law. Thus, to the extent the information at issue existed when the request was received, we have no choice but to order the housing authority to release this information in accordance with section 552.302 of the Government Code. If you believe this information is confidential and may not lawfully be released, 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 457809

No enclosures

c: Requestor