



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2012

Ms. Ashley R. Allen
Administrative Law Section
Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

OR2012-10699

Dear Ms. Allen:

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# 458885.

The Texas General Land Office (the "GLO") received a request for all e-mails from a named individual from a specified time period concerning all state veterans nursing homes. You claim the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.104, 552.105, 552.107, 552.110, 552.111, 552.113, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code. You also inform us that release of this information may implicate the proprietary interests of certain third parties. Accordingly, you state the GLO notified the third parties of the request for information and of their rights to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have considered the exceptions you claim.

We must address the GLO'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 GLO received the present request for information on April 25, 2012. Accordingly, the GLO's fifteen-business-day deadline was May 16, 2012. However, as of the date of this letter, the GLO has not submitted general written comments stating the reasons why the claimed exceptions apply to the requested information or a copy or representative sample of the specific information requested. Accordingly, we conclude the GLO 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). Because the GLO failed to comply with the requirements of the Act, the GLO has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 665 at 2 n. 5 (2000) (untimely request for decision results in waiver of discretionary exceptions). Furthermore, although the GLO also raises mandatory exceptions to disclosure of the requested information, because you have not submitted this information for our review, we have no basis for finding any it is excepted from disclosure or confidential by law. However, you also claim third party interests are at stake. Because third party interests can provide a compelling reason to withhold information, we will address whether the requested information must be withheld to protect the interests of third parties.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. Gov't Code § 552.305(d)(2)(B). However, as of the date of this letter, we have not received comments from any third parties explaining why their information should not be released. Therefore, we have no basis to conclude any third parties have a protected proprietary interest in any of the requested information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the GLO may not withhold the requested information based upon the

proprietary interests of any third parties. Thus, to the extent the requested information existed when the request was received, we have no choice but to order the GLO 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# 458885

No enclosures

c: Requestor