



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2012

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2012-11678

Dear Mr. Mann:

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# 460013 (GCA 12-0373).

The City of Garland (the "city") received a request for information concerning the development of a specified piece of property as a marina. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim.

We must address the city's responsibilities under the Act. Section 552.301 of the Government Code 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 that receives a request for information it wishes to withhold under an exception to disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments explaining 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). The city received the request for information on May 4, 2012. However, as of the date of this letter, you have not

submitted arguments explaining why the stated exceptions apply or a copy or representative sample of the specific information requested. Consequently, we find the city failed to comply with the requirements of section 552.301(e) of the Government Code in asking this office for a ruling.

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 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) (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). Normally, a compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you raise sections 552.103 and 552.107, we note these are discretionary exceptions that protect a governmental body's interests and may be waived. *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 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, sections 552.103 and 552.107 do not provide a compelling reason for non-disclosure, and none of the requested information may be withheld on those bases.

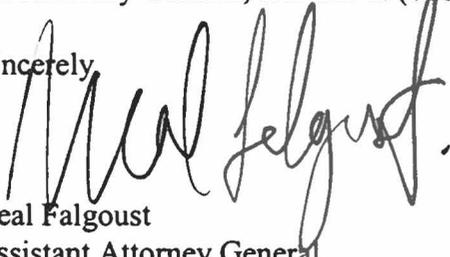
You also raise section 552.101 of the Government Code, which can provided a compelling reason for non-disclosure. However, because you have not submitted a copy or representative sample of the information at issue for our review, we have no basis for finding any of the requested information confidential by law. Therefore, we must order the city to release the information at issue pursuant to 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 (878) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large initial "N" and a long, sweeping underline.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 460013

c: Requestor