



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2012

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

OR2012-14596

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# 464884.

The Texas General Land Office (the "GLO") received a request for the scoring breakdown for bid number RSP-21910-SK. You claim that 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 state that the requested information may implicate the interests of third parties. Although you do not identify any of the third parties, you state the GLO notified the third parties of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you have raised.

We must address the GLO'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.

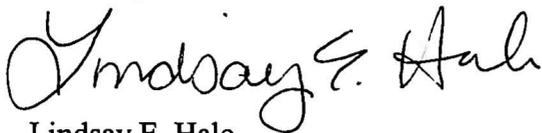
Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See* Gov't Code § 552.301(e)(1)(A)-(D). You state the GLO received the present request for information on June 25, 2012. As of the date of this letter, you have not submitted to this office comments explaining why the GLO's claimed exceptions apply or a copy or representative sample of the information requested. Consequently, we find the GLO failed to comply with the requirements of section 552.301(e).

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, orig. proceeding); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, orig. proceeding) (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). 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 Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Furthermore, although the GLO also raises mandatory exceptions to disclosure, because you have not submitted any of the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. You also claim third party interests are at stake, which can provide a compelling reason to withhold information. However, we have not received comments from a third party explaining how release of the requested information would affect its proprietary interests. *See* Gov't Code § 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. Therefore, we have no choice but to order the requested information released to the requestor pursuant to section 552.302 of the Government Code. If you believe there is a compelling reason to withhold the information, 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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 464884

c: Requestor