



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

October 1, 2012

Mr. Warren M. S. Ernst  
Chief of the General Counsel Division  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2012-15545

Dear Mr. Ernst:

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# 466501 (City of Dallas Request# 12-00370191).

The City of Dallas (the "city") received a request for e-mail messages generated or received from September 1, 2011 to January 31, 2012 by the city's mayor, any member of the mayor's staff, and all members of the city council and their staff, including electronic communications involving eight named individuals, regarding a named council member on the board of trustees of the Dallas Police and Fire Pension System. You claim that the requested information is excepted from disclosure under sections 552.101 through 552.142 of the Government Code. We have considered the exceptions you claim.

We must address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business 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. Gov't Code § 552.301(e). You inform us the city received the request on July 11, 2012. Accordingly, the city's fifteen-business-day deadline was August 1, 2012. However, as of the date of this letter, you have not submitted arguments stating the reasons why the stated exceptions apply,

or a copy of the responsive information or a representative sample. Therefore, we find the city 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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *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, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). 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). Because the city failed to comply with the requirements of the Act, the city 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). Although the city also raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the requested information excepted from disclosure or confidential by law. Thus, we have no choice but to order you to release the requested information in accordance with section 552.302 of the Government Code. If you believe the 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](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,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/eb

Ref: ID# 466501

Enc. Submitted documents

c: Requestor  
(w/o enclosures)