



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2012

Ms. Jessica Scott
Scanlan, Buckle & Young, P.C.
602 West 11th Street
Austin, Texas 78701

OR2012-16265

Dear Ms. Scott:

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# 467660.

The City of Rollingwood (the "city"), which you represent, received a request for five categories of information pertaining to the city's water conservation restrictions and enforcement. You state the city is making available to the requestor some responsive information, including Exhibit B-1. You claim some of the submitted information is excepted from disclosure under sections 552.106, 552.111, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to

¹Although you initially raised sections 552.103 and 552.108 of the Government Code as exceptions to disclosure of Exhibit B-1, you withdrew those claims by letter dated September 19, 2012. Further, while you also raised section 552.107 of the Government Code as an exception to disclosure, you make no arguments to support your claim under this exception. Accordingly, we understand the city no longer asserts section 552.107. See Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

disclosure that apply within ten business days after receiving the request. Gov't Code § 552.301(b). You state the city received the request for information on July 19, 2012. Thus, the city's ten-business-day deadline was August 2, 2012. *See id.* While you raised section 552.137 in your letter dated August 2, 2012, within the ten-business-day time period as required by subsection 552.301(b), you did not raise sections 552.106 and 552.111 until August 9, 2012. Consequently, as to your arguments under sections 552.106 and 552.111, we find you did not comply with section 552.301 of the Government Code.

A governmental body's failure to comply with section 552.301 results in the waiver of its untimely claim, unless that claim is a compelling reason for withholding information from disclosure. *See generally 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, 381-82 (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); *see also generally* Open Records Decision No. 630 (1994). 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. Open Records Decision No. 150 at 2 (1977).

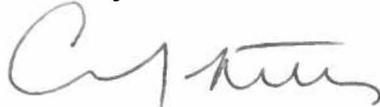
Sections 552.106 and 552.111 of the Government Code are discretionary exceptions to disclosure that protect only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (governmental body may waive section 552.111). As such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. Therefore, in failing to comply with the requirements of section 552.301, you have waived your claims under sections 552.106 and 552.111. Therefore, we will address only your timely raised claim under section 552.137 for the information at issue in Exhibits B-2 and B-3.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses you have marked, and the additional addresses we have marked, are not specifically excluded by section 552.137(c). Accordingly, the marked e-mail addresses must be withheld under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. The remaining information in Exhibits B-2 and B-3 must be released.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 467660

Enc. Submitted documents

c: Requestor
(w/o enclosures)