



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 31, 2012

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

OR2012-17368

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# 469506 (GCA 12-0653).

The City of Garland (the "city") received a request for the "comment section" from a specified survey of city employees. You claim the requested information is excepted from disclosure under section 552.111 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

We must address the city's procedural obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for an attorney general's decision and state the exceptions that apply no later than the tenth business day after the date of receiving the written request. *See* Gov't Code § 552.301(b). 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

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<sup>1</sup>Although you initially raised sections 552.101 and 552.102 of the Government Code as exceptions to disclosure of the information at issue, you have provided no arguments regarding the applicability of these sections. Therefore, we assume you no longer assert sections 552.101 and 552.102. *See* Gov't Code §§ 552.301(b), (e), .302.

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. *See id.* § 552.301(e). You state the city received the request for information on August 9, 2012. Accordingly, the city's ten-day-business deadline under section 552.301(b) was August 23, 2012. However, you did not raise section 552.111 and the deliberative process privilege until after the ten-business-day deadline had passed. Furthermore, the city's fifteen-business-day deadline was August 30, 2012. On August 30, the city sent comments to our office stating it was going to release the requested information and therefore, the city was withdrawing its request for a ruling. However, a letter rescinding the withdrawal and stating the withdrawal letter was sent in error along with the city's written comments and a copy of the requested information was sent to this office on September 5, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Additionally, we note that you have redacted information from some of the submitted documents that you seek to withhold. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any information at issue without seeking a ruling from this office. We are unable to discern the exact nature of the information you have redacted in these documents. Failure to provide this office with complete copies of the requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See id.* §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of specific information requested), .302. Consequently, we find the city failed to comply with the requirements mandated by section 552.301.

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 the requested information is public and must be released. Information that is 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, 381-82 (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* 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). Although you raise section 552.111 of the Government Code as an exception to disclosure of the information at issue, this exception is discretionary in nature. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). This exception serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to

withhold information for purposes of section 552.302. Accordingly, the city may not withhold the information at issue pursuant to section 552.111 of the Government Code. As no further exceptions to disclosure have been raised, the city must release the submitted information.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/tch

Ref: ID# 469506

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

