ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 7, 2012

Mr. Benjamin V. Lugg
Attorney
San Antonio Housing Authority
818 South Flores Street
San Antonio, Texas 78204

OR2012-17914

Dear Mr. Lugg:

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# 470552.

The San Antonio Housing Authority (the "authority") received a request for four categories of information related to a named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.105, 552.106, 552.107, 552.110, 552.111, 552.112, 552.113, 552.116, 552.117, 552.125, 552.128, 552.130, 552.131, 552.136, 552.137, 552.143, 552.146, 552.147, 552.149, and 552.153 of the Government Code.[1] We have considered the exceptions you claim.

We must address the authority's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must to submit to this office, among other items, written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, you state the authority received the request for information on August 21, 2012. Accordingly, the fifteen-business-day deadline was September 12, 2012. *See id.* § 552.308 (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). However, as of the date of this ruling, we have not received written comments as to why the stated exceptions apply to the

[1]We note that although you also raise sections 552.021 and 552.301 of the Government Code, these are not exceptions to disclosure under the Act. *See* Gov't Code §§ 552.021 (providing public information is available during normal business hours), .301 (providing procedural requirements for requesting ruling).

requested information or any responsive information from authority. Consequently, we find the authority failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless the governmental body overcomes the presumption by demonstrating a compelling reason to withhold the information. *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); *see also* Open Records Decision No. 630 (1994). 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 authority has failed to comply with the requirements of the Act, the authority has waived all 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, because you have not submitted the requested information to this office for our review, we have no basis for finding it confidential under any mandatory exceptions. 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, 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,

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 470552

No enclosures

c: Requestor
(w/o enclosures)