



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2012

Mr. Brent A. Money  
Counsel for the City of Greenville  
Scott, Money & Ray PLLC  
P.O. Box 1353  
Greenville, Texas 75403-1353

OR2012-20706

Dear Mr. Money:

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# 475244.

The City of Greenville (the "city"), which you represent, received a request for all communications between city council members and L-3 Communications Integrated Systems, L.P., during a specified time period. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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. *See*

*id.* § 552.301(e). You state the city received the request for information on October 9, 2012. You do not inform us the city was closed for any business days between October 9, 2012, and October 30, 2012. Accordingly, you were required to provide the information required by subsection 552.301(b) by October 23, 2012. Moreover, you were required to provide the information required by subsection 552.301(e) by October 30, 2012. This office received your request for a decision on October 26, 2012, and received the information required by subsection 552.301(e) on November 1, 2012. The envelopes in which the city provided the information required by subsections 552.301(b) and 552.301(e) do not bear postmarks. Further, the city has not furnished satisfactory proof the required information was deposited in the mail within the ten- and fifteen-business-day deadlines. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. The city claims section 552.103 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.103 of the Government Code. However, as section 552.137 can provide a compelling reason to overcome this presumption, we will address the applicability of section 552.137 to the submitted information.<sup>1</sup>

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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We note section 552.137 does not apply to an e-mail address of a person who has a contractual relationship with a governmental body or the person's agent. *See id.* § 552.137(c)(1). The e-mail addresses we have marked are not excluded by subsection (c). Therefore, the city must withhold the marked personal e-mail addresses within the submitted documents under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.<sup>2</sup> The remaining information 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 475244

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.