



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2013

Mr. Gary B. Lawson  
Counsel for the Dallas Police and Fire Pension System  
Strasburger & Price, L.L.P.  
901 Main Street, Suite 4400  
Dallas, Texas 75202-3794

OR2013-09181

Dear Mr. Lawson:

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# 489148.

The Dallas Police and Fire Pension System (the "system") received a request for e-mails to or from a named individual on a specified date. You state some of the requested information will be made available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107, 552.111, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the system'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(e), a governmental body must submit to this office within fifteen business

---

<sup>1</sup>Although you also raise section 552.101 of the Government Code with the attorney-client and work product privileges, we note section 552.101 of the Government Code does not encompass discovery privileges. *See* Open Records Decision No. 647 at 2 (1996). Additionally, although you raise Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, we note the proper exceptions to raise when asserting the attorney-client privilege and work product privilege for information not subject to section 552.022 of the Government Code are sections 552.107 and 552.111 of the Government Code, respectively. *See* Open Records Decision Nos. 676 at 1-2 (2002), 677 (2002). Finally, although you do not specifically raise section 552.137 of the Government Code in your brief, we understand you to raise this section based on your markings.

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* Gov't Code § 552.301(e). The system received the request for information on March 15, 2013. Accordingly, the system was required to submit the information required by subsection 552.301(e) by April 5, 2013. However, the system did not submit a copy of the request for information until April 16, 2013. Thus, we find the system failed to comply with the procedural requirements of section 552.301 of the Government Code in asking this office for a ruling.

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 information is public and must be released. Information 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 (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); 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). Sections 552.107 and 552.111 of the Government Code are discretionary in nature; they serve only to protect a governmental body's interests. As such, the system's claims under these sections are not compelling reasons to overcome the presumption of openness. *See* Open Records Decision No. 677 at 10 (2002) (attorney work-product privilege under section 552.111 or Texas Rule of Civil Procedure 192.5 is not compelling reason to withhold information under section 552.302), 676 at 12 (attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Accordingly, the system may not withhold any of the submitted information under sections 552.107 or 552.111. However, because section 552.137 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information.

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). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a

contractual relationship with a governmental body, an e-mail address in information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract, or an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). Upon review, we find the system must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure. However, we note the remaining e-mail addresses you have marked fall under subsection 552.137(c); therefore, the system may not withhold any of the remaining e-mail addresses under section 552.137 of the Government Code. As the system raises no further exceptions to disclosure, 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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/bhf

Ref: ID# 489148

Enc. Submitted documents

c: Requestor  
(w/o enclosures)