



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2013

Mr. Joshua Haley
Staff Attorney
Texas Municipal League Intergovernmental Risk Pool
P.O. Box 149194
Austin, Texas 78714-9194

OR2013-12317

Dear Mr. Haley:

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# 493649.

The Texas Municipal League Intergovernmental Risk Pool ("TML") received a request for specified letters. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure. We have considered your arguments and reviewed the submitted information.

Initially, we must address TML's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to subsection 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). TML received the request for information on April 29, 2013. Accordingly, TML's ten-business-day deadline was May 13, 2013. While you raised section 552.103 of the Government Code within the ten-business-day time period required by subsection 552.301(b), you did not raise rule 192.5 of the Texas Rules of Civil Procedure within that time period. Consequently, we find TML failed to comply with the procedural requirements of subsection 552.301(b) of the Government Code with respect to its claim under rule 192.5 of the Texas Code of Civil Procedure.

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 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). 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). Although you raise rule 192.5 of the Texas Rules of Civil Procedure for the submitted information, this rule is discretionary in nature. It 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. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under rule 192.5 is not compelling reason to withhold information under section 552.302); 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, in failing to timely raise rule 192.5 for the submitted information, TML has waived its claim under this rule. Accordingly, none of the submitted information may be withheld under rule 192.5 of the Texas Rules of Civil Procedure. However, we will consider your timely raised claim under section 552.103 of the Government Code.

Section 552.103 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documentation sufficient to establish the applicability of this exception to the information that it seeks to withhold. To meet this burden, the governmental body must demonstrate that (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to the pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). The governmental body must meet both prongs of this test for information to be excepted from disclosure under section 552.103(a). *See* Open Records Decision No. 551 at 4 (1990).

You inform us TML received the request for information after two lawsuits were filed against the City of Jasper. In response to this office's request for additional information under section 552.303(c) of the Government Code, you state TML "is not directly a party to the lawsuits at issue." *See* Gov't Code § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render decision). Thus, TML is not a party to the litigation at issue and, therefore, does not have a litigation interest in the matters for purposes of section 552.103. *See id.* § 552.103(a); Open Records Decision No. 575 at 2 (1990) (stating predecessor to section 552.103 only applies when governmental body is party to litigation). In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. However, you have not provided this office with an affirmative representation from a governmental body with a litigation interest explaining that it seeks to withhold the submitted information under section 552.103. Accordingly, TML may not withhold any of the information at issue under section 552.103 of the Government Code. As no further exceptions to disclosure are raised for the submitted information, TML must release it.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 493649

Enc. Submitted documents

c: Requestor
(w/o enclosures)