



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2013

Ms. Claire Yancey
Assistant District Attorney
Criminal District Attorney's Office
County of Denton
P.O. Box 2850
Denton, Texas 76202

OR2013-12660

Dear Ms. Yancey:

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# 493914.

Denton County (the "county") received a request for correspondence with Wise County or the Texas Department of Transportation ("TxDOT") relating to the proposed realignment of County Line Road; minutes of the county Commissioners Court which refer to the funding of improvements, reconstruction, or realignment of the County Line Road; and notes and memos prepared by the employees of two named county commissioners relating to County Line Road, all during a specified time period.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.104, 552.105, 552.109, 552.111, and 552.131 of the Government Code. You also state release of the requested information could implicate the interests of the Wise County Architect and TxDOT. Accordingly, you state, and submit documentation showing, you notified the Wise County Architect and TxDOT of the request and of their right to submit comments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹As you have not submitted a copy of the request for information, we take our description from your brief.

Initially, we note this office has not received any comments from the Wise County Architect or TxDOT. Accordingly, the county may not withhold any of the requested information based upon the interests of the Wise County Architect or TxDOT.

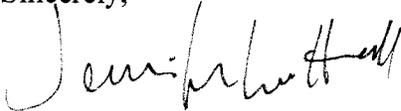
We must address the county's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or 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 inform us that the county received this request on April 30, 2013. However, as of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, a copy of the request for information, or a copy or representative sample of the information requested. Consequently, we find that the county failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the 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). Generally, 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). You assert that the requested information is confidential under sections 552.101, 552.104, 552.105, 552.109, 552.111, and 552.131 of the Government Code. In failing to comply with the procedural requirements of section 552.301, you have waived the discretionary exceptions you raised. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the requested information may not be withheld under any of the discretionary exceptions. Furthermore, by failing to submit any information for our review, we have no basis for finding it confidential under the claimed mandatory exceptions. Thus, we have no choice but to order the requested information released pursuant to section 552.302. 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.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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 493914

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. William Nelson Jr., P.E.
Texas Department of Transportation
1710 West US 380
Decatur, Texas 76234
(w/o enclosures)

Mr. Chad Davis, P.E., C.F.M.
Wise County Engineer
1415 South FM 51
Decatur, Texas 76234
(w/o enclosures)