



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 1, 2013

Ms. Loretta DeHay  
General Counsel  
Texas Real Estate Commission  
P.O. Box 12188  
Austin, Texas 78711-2188

OR2013-17057

Dear Ms. DeHay:

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# 500938.

The Texas Real Estate Commission (the "commission") received a request for the requestor's test questions and answers on a specified examination, which questions the requestor answered correctly and incorrectly on any PSI Services, L.L.C. ("PSI") examination the requestor has taken, and an explanation of why the requestor's answers were incorrect. You claim the submitted information is excepted from disclosure under sections 552.110 and 552.122 of the Government Code.<sup>1</sup> Additionally, you state release of the submitted information may implicate PSI's proprietary interests. Accordingly, you notified PSI of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received arguments from PSI. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note a portion of the request requires the commission to answer questions. The Act does not require a governmental body to answer general questions, perform legal

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<sup>1</sup>Although the commission raises section 552.101 of the Government Code in conjunction with section 552.110 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1 (2002), 575 at 2 (1990).

research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, we assume the commission has made a good faith effort to locate any information responsive to this request. Accordingly, we will address the arguments for the submitted information.

Next, we must address the commission'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. *See* Gov't Code § 552.301. 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 commission received the request for information on July 12, 2013. Accordingly, you were required to provide the information required by subsection 552.301(e) by August 2, 2013. However, you did not submit a copy of the requested information to this office until August 5, 2013. Accordingly, we conclude the commission 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. Section 552.122 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *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). Thus, the commission's claim under section 552.122 is not a compelling reason to overcome the presumption of openness. Therefore, the commission may not withhold any of the submitted information under section 552.122. However, because section 552.110 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address the commission's arguments under that section. Additionally, because the third party interests at issue here can provide compelling reasons to overcome the presumption of openness, we will address the arguments submitted by PSI.

The commission raises section 552.110 of the Government Code for the submitted information. Section 552.110 protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). We note section 552.110 protects the interests of private parties that provide information to governmental bodies, not the interests of governmental bodies themselves. *See generally* Open Records Decision No. 592 (1991). Accordingly, we do not consider your arguments under section 552.110 of the Government Code.

PSI raises section 552.101 of the Government Code for the submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, PSI has not directed our attention to any law, nor are we aware of any law, under which any of the submitted information is considered to be confidential for purposes of section 552.101 of the Government Code. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Accordingly, none of the submitted information may be withheld on the basis of section 552.101 of the Government Code.

PSI also raises section 552.122 of the Government Code for the submitted information. Section 552.122 of the Government Code excepts from required public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). Section 552.122 is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions which are intended to protect the interests of third parties. *See* Open Records Decision No. 522 (1989) (discretionary exceptions in general). As noted above, because the commission waived its interests under section 552.122 of the Government Code, the commission may not withhold the submitted information pursuant to section 552.122 of the Government Code. *See* ORD 665 at 2 n.5. As no further exceptions to disclosure of the submitted information have been raised, the commission must release the submitted information to the requestor.<sup>2</sup>

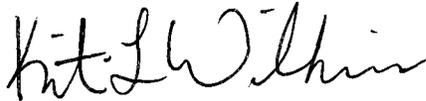
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>2</sup>We note the information being released contains the requestor's social security number to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Section 552.147(b) of the Government Code authorizes a governmental body to withhold a living person's social security number without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Accordingly, if the commission receives another request for this information from a requestor who would not have such a right of access, the commission is authorized to withhold the requestor's social security number under section 552.147(b).

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](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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/bhf

Ref: ID# 500938

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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