



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 25, 2013

Mr. Michael Bostic
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2013-20545

Dear Mr. Bostic:

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# 506719.

The City of Dallas (the "city") received a request for: (1) a copy of the statement submitted by the Cedar Crest Golf Course in reference to a specified claim number; and (2) a copy of the decision by the city's Office of Risk Management and any specific law, policy, rule or regulation used as the basis for that decision. You state the city will release all information in its possession responsive to the second portion of the request. You claim the remaining requested information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

We must address the city's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that 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) of the Government Code, a governmental body must ask for

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

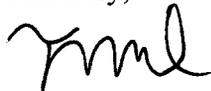
the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state the city received the request for information on August 22, 2013. You inform us city offices were closed on September 2, 2013, in observance of Labor Day. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the city's ten-business-day deadline was September 6, 2013. The envelope in which the city requested a ruling from this office bears postmarks of September 6, 2013 and September 13, 2013, and was received by this office on September 20, 2013. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Because the envelope in which the city requested a ruling bears two postmarks, one of which was dated after the 10-business-day deadline prescribed by section 552.301, we are unable to determine whether the city timely requested a ruling. Therefore, we find the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision.

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). Sections 552.103 and 552.111 of the Government Code are discretionary in nature; they serve only to protect a governmental body's interests. As such, the city's claims under these exceptions are not compelling reasons to overcome the presumption of openness. *See 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 section 552.103); 663 at 5 (1999) (governmental body may waive section 552.111); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). In failing to comply with section 552.301, the city has waived its claims under sections 552.103 and 552.111 of the Government Code. Therefore, none of the information at issue may be withheld under these exceptions. As you raise no further exceptions to disclosure, the information at issue 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.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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 506719

Enc. Submitted documents

c: Requestor
(w/o enclosures)