



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2014

Mr. J. Eric Magee
Allison, Bass & Associates, LLP
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402 West 12th Street
Austin, Texas 78701

OR2014-01219

Dear Mr. Magee:

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# 511598.

Waller County (the "county"), which you represent, received four requests from the same requestor for (1) work orders, memoranda, and e-mail communications between certain individuals concerning any repairs, requests for repairs, or building issues related to Waller County Community Center (the "center"); (2) documents related to the closure of the center; and (3) work orders, bids, or requests for bids relating to the center during a specified period of time. Although you take no position with respect to the public availability of the requested information, you state the proprietary interests of certain third parties might be implicated. Accordingly, you notified BAQ Inc. ("BAQ") and EMLab P&K, LLC ("EMLab") of the requests and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have reviewed the submitted information.

Initially, we must address the county's obligations under section 552.301 of the Government Code. Section 552.301 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 section 552.301(b) of the Government Code, 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). You inform us the county received the first request for information on October 16, 2013. Accordingly, the county's ten business-day-deadline was October 30, 2013. The envelope in which the county originally submitted its request for a ruling bears a postmark of October 30, 2013. You explain, however, and the submitted information reflects, the original submission was returned for insufficient postage. Subsequently, the county hand-delivered the required information to this office on November 5, 2013. Section 552.308 of the Government Code provides when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail "with postage . . . prepaid" and the postmark date is within the required time period. *See id.* § 552.308. Because the county did not submit the information required by section 552.301(b) within the required time period, we find the county failed to comply with the requirements of section 552.301 with regard to the first request.

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason 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); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because third-party interests are involved in this instance, we will consider whether the submitted information must be released under the Act.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from either third party. Thus, BAQ and EMLab have failed to demonstrate that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the county may not withhold the submitted information on the basis of any proprietary interests BAQ or EMLab may have in the information. As no exceptions to disclosure have been raised, the submitted information must be released in its entirety.

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 511598

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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