



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2014

Ms. Cheryl Elliott Thornton
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002

OR2014-01836

Dear Ms. Thornton:

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# 512532 (CAO File No. 13PIA0581).

The Harris County Housing Authority (the "authority") received a request for specified insurance policies, specified settlement agreements, specified authority bylaws in effect during a specified time period. You claim the requested information is excepted from disclosure under sections 552.101, 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must address the authority'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 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 authority received the request for information on October 23, 2013. Accordingly, the authority's ten-business-day deadline was November 6, 2013. The envelope in which the authority requested a ruling from this office bears a meter-mark of November 13, 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). Therefore, we find the authority 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 authority'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); Open Records Decision No. 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 authority 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 section 552.103 or section 552.111 of the Government Code. You also raise section 552.101 of the Government Code as an exception to disclosure for the submitted information. We note portions of the submitted information are subject to section 552.136 of the Government Code.¹ Because sections 552.101 and 552.136 can provide compelling reasons to withhold information under the Act, we will address the applicability of these exceptions to the submitted information.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures;

...

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(8), (18). The submitted information includes the bylaws of the authority subject to subsection 552.022(a)(8) and a settlement agreement subject to subsection 552.022(a)(18). The authority may only withhold the information subject to subsections 552.022(a)(8) and 552.022(a)(18) if it is made confidential under the Act or other law. Because sections 552.101 and 552.136 of the Government Code can make information confidential for purposes of subsections 552.022(a)(8) and 552.022(a)(18), we will address the applicability of these sections to the information subject to section 552.022 as well as the remaining information.

We understand the authority to contend the submitted information should be withheld under section 552.101 of the Government Code because the authority agreed to keep the submitted information "confidential." Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. However, the authority has not pointed to any statutory confidentiality provision, nor are we aware of any, that would make any of the information at issue confidential for purposes of section 552.101. *See, e.g.*, Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, the authority may not withhold the information at issue under section 552.101 of the Government Code. Further, we note information is not confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found, v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot, through an agreement or contract, overrule or repeal provisions of the Act. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the predecessor to the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110 Government Code). Consequently, unless the submitted information comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Section 552.136 of the Government Code states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136; *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. This office has determined an insurance policy number is an access device for the purposes of section 552.136. Accordingly, we find the authority must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body

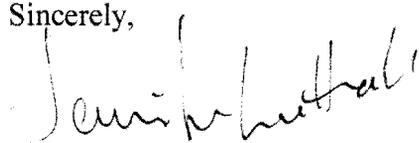
must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the authority must withhold the information we have marked under section 552.136 of the Government Code. The authority must release the remaining information, but any information subject to copyright may only be released in accordance with copyright law.

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# 512532

Enc. Submitted documents

c: Requestor
(w/o enclosures)