



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 11, 2014

Ms. Rachel Saucier  
Legal Assistant  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2014-04134

Dear Ms. Saucier:

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# 516600 (ORR No. 2013-657).

The City of Georgetown (the "city") received a request for all e-mails, phone conversations, and other documents regarding the requestor, two other named individuals, a specified address, and a specified location during a specified period of time. You claim the requested information is excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503. We have considered the submitted arguments.

We must address the city's 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(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed 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. Gov't Code § 552.301(e). The city received the request for information on December 16, 2013. As of the date of this letter, you have not submitted to this office a copy or representative sample of the information requested. Accordingly, we conclude the city failed to comply with the requirements of section 552.301.

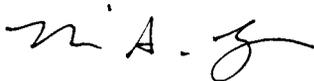
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed

public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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 (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* Open Records Decision No. 630 (1994). Although you claim the requested information is excepted from disclosure under section 552.107 and privileged under Texas Rule of Evidence 503, these are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Open Records Decision No. 676 at 12 (2002) (attorney-client privilege under Gov't Code § 552.107 or Texas Rule of Evidence 503 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm a third party); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, in failing to comply with section 552.301, the city has waived its arguments under section 552.107 and Texas Rule of Evidence 503. Therefore, 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](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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/ac

Ref: ID# 516600

c: Requestor