



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2014

Ms. Barbara Boulware-Wells
Counsel for City of Lago Vista
Knight & Partners
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2014-08347

Dear Ms. Boulware-Wells:

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# 522756.

The City of Lago Vista (the "city"), which you represent, received a request for eight categories of information pertaining to Montechino and Northshore Homes. You claim the requested information is excepted from disclosure under sections 552.103, 552.106, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim.

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 February 24, 2014. As of this date, you have not submitted to this office a copy or representative sample of the information requested or arguments explaining why the claimed exceptions apply. 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). Sections 552.103, 552.106, 552.107, 552.108, and 552.111 are discretionary exceptions to disclosure and may be waived. *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 Nos. 677 at 10 (attorney work product privilege under section 552.111 may be waived), 676 at 6 (2002) (section 552.107(1) is not other law for purposes of section 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver), Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Because the city has failed to comply with the procedural requirements of the Act, the city has waived all of its discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Thus, 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, 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,

A handwritten signature in black ink that reads "Megan G. Holloway". The signature is written in a cursive, flowing style.

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/akg

Ref: ID# 522756

c: Requestor