



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 2, 2014

Ms. Michelle M. Kretz  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3rd Floor  
Fort Worth, Texas 76102

OR2014-11382

Dear Ms. Kretz:

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# 527761 (City ID# W032489).

The City of Fort Worth (the "city") received a request for the e-mails of two named city employees referencing the requestor's name during a specified time period.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.107(1) of the Government Code and privileged under Rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

As you acknowledge, the city failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. 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* Gov't Code § 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

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<sup>1</sup>You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). You assert the submitted information is excepted from disclosure under section 552.107(1) of the Government Code and privileged under Texas Rule of Evidence 503. However, these exceptions are discretionary in nature and may be waived, and, thus, do not provide compelling reasons to withhold information under section 552.302. See Gov't Code § 552.007; Open Records Decision Nos. 676 at 11-12 (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 third party), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Thus, the city has waived its claims and may not withhold any of the submitted information on the basis of section 552.107 of the Government Code or Texas Rule of Evidence 503. As you raise no further exceptions to disclosure, the city must release the submitted information.<sup>2</sup>

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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/tch

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<sup>2</sup>We note the requestor has a special right of access to some of the information being released in this instance. See Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party's representative, solely on grounds that information is considered confidential by privacy principles). Because such information is confidential with respect to the general public, if the city receives another request for this information from a different requestor, then the city should again seek a ruling from this office.

Ref: ID# 527761

Enc. Submitted documents

c: Requestor  
(w/o enclosures)