



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 29, 2016

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

OR2016-19553

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# 624442.

The City of Lago Vista (the "city"), which you represent, received a request for specified permits and specified contracts or communications. You state you will release some information. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 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). You state the

city received the request for information on June 16, 2016. However, as of the date of this letter, you have not submitted to this office written comments explaining why the stated exceptions apply or a copy or representative sample of the information requested. Accordingly, we conclude the city failed to comply with the requirements of section 552.301(e).

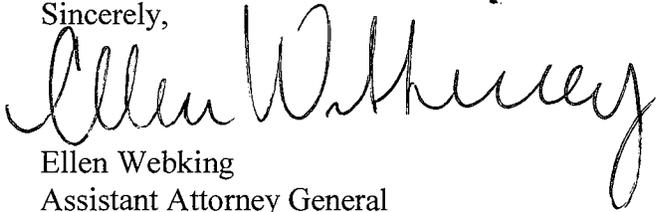
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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). Although you raise sections 552.103 and 552.107 of the Government Code, these exceptions are discretionary in nature. They serve to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information. *See* Gov't Code § 552.007; *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. 676 at 6 (2002) (attorney-client privilege under section 552.107(1) may be waived), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Furthermore, because the city has not submitted the information to this office for our review, we have no basis for finding it confidential under any mandatory exceptions or by other law. Therefore, we have no choice but to order the city to release the responsive information in accordance with section 552.302 of the Government Code. If the city believes the information is confidential and may not lawfully be released, the city must challenge this ruling in court pursuant to 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 cursive script that reads "Ellen Webking". The signature is written in black ink and is positioned above the typed name and title.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 624442

c: Requestor