



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 24, 2016

Mr. Benjamin V. Lugg
Attorney
San Antonio Housing Authority
P.O. Box 1300
San Antonio, Texas 78295-1300

OR2016-23747

Dear Mr. Lugg:

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# 631652.

The San Antonio Housing Authority (the "authority") received a request for information pertaining to interviews conducted by the authority for a specified position. You state the authority has released some information. You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

We must address the authority's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). The authority received the request for information on August 15, 2016. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Thus, the authority's ten-business-day deadline was August 29, 2016. The authority did not raise section 552.122 until August 31, 2016, which is after the ten-business-day deadline had

¹Although you raise section 552.101 of the Government Code in conjunction with section 552.122 of the Government Code, we note section 552.101 does not encompass other exceptions in the Act. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

passed. Consequently, we find the authority failed to meet the ten-business-day requirement as prescribed by section 552.301(b) of the Government Code.

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 information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *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); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although the authority raises section 552.122 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Thus, in failing to comply with section 552.301, the authority has waived its argument under section 552.122, and may not withhold the information at issue on that basis. As no other exceptions to disclosure have been raised, the submitted information must be released.

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, appearing to read "Cole Hutchison", with a long horizontal flourish extending to the right.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 631652

Enc. Submitted documents

c: Requestor
(w/o enclosures)