



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 13, 2007

Mr. Matthew C.G.Boyle
Assistant City Attorney
Boyle & Lowry, L.L.P
City of Farmers Branch
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2007-02794

Dear Mr. Boyle:

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# 273235.

The City of Farmers Branch (the "city"), which you represent, received a request for seventeen categories of information. You state that you will release a portion of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.105, and 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially we must address the city's obligations under the Act. Section 552.301(e-1) of the Government Code requires that a governmental body send to the requestor a copy of its written comments to the attorney general. *See Gov't Code § 552.301(e-1)*. The requestor informed us that the city failed to provide him with a copy of its written comments. Upon review, we find the city failed to comply with the procedural requirements of section 552.301 of the Government Code.

¹We note that although you also raise sections 552.101 and 552.102 of the Government Code, you make no arguments in support of these exceptions. Therefore, we assume you have withdrawn your claim that these exceptions apply to any of the submitted information.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301(e-1) results in the legal presumption that the 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 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. 319 (1982). Generally, a governmental body can overcome the presumption that information is public under section 552.302 by demonstrating that the information is confidential by law or that its disclosure affects third party interests. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 552.103, 552.105, and 552.107 of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *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 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 at 2 (1990) (statutory predecessor of section 552.105 subject to waiver). By failing to comply with the requirements of section 552.301, the city has waived its claims under sections 552.103, 552.105, and 552.107 of the Government Code. Accordingly, the city may not withhold any of the requested information under these sections. As you raise no other exceptions to disclosure, the requested information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/jb

Ref: ID# 273235

Enc. Submitted documents

c: Mr. Paul Heller
13806 Wooded Creek Drive
Farmers Branch, Texas 75244
(w/o enclosures)