



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2007

Mr. Jason L. Mathis
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR2007-09937

Dear Mr. Mathis:

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 #285764.

The Town of Addison's Building Inspection Department (the "department") received a request for information pertaining to Midwest Drywall Company and its role in the construction of the Aventura Condominiums in Addison. You claim that the information responsive to this request is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(b), a governmental body that receives a written request for information that it wishes to withhold from disclosure pursuant to an exception under the Act must submit to this office, within fifteen days of receiving the request, (1) general written comments stating the reasons why the stated 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)(1)(A)-(D). You received this request for information on May 15, 2007. As of the date of this letter you have not submitted a copy or representative sample of the specific information requested or general written comments stating the reasons why the requested information should be withheld. Accordingly, we conclude that you have failed to comply with 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, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). You assert that the information at issue is excepted under sections 552.103 and 552.107, which are discretionary exceptions to disclosure that protect a governmental body's interests 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 No. 663 at 5 (1999) (governmental body may waive section 552.107). In failing to comply with section 552.301, the department has waived its claims under sections 552.103 and 552.107. Although section 552.101 of the Government Code can provide a compelling reason for nondisclosure of information under section 552.302, we have no basis for concluding that the requested information is excepted under this section because you failed to submit any portion of it to us for our review. Therefore, we have no choice but to order you to release the requested information. If you believe that the information at issue is confidential, private, or proprietary and may not lawfully be released, you must challenge this ruling in court as outlined below.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/jb

Ref: ID# 285764

Enc. Submitted documents

c: Mr. Richard R. Arispe, EST
Texas Carpenters & Millwrights Regional Counsel
5364 Fredericksburg Road, Suite 130
San Antonio, Texas 78229
(w/o enclosures)