



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2009

Mr. John T. Reynolds
Corporate Counsel
San Antonio Water System
P. O. Box 2449
San Antonio, Texas 78298-2449

OR2009-08065

Dear Mr. Reynolds:

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# 345712.

The San Antonio Water System (the "system") received a request for the employment contract of a named individual and the document reflecting the age and condition of the system's existing infrastructure.¹ You indicate the system has provided some of the requested information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim.

We must address the system's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). As of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, nor have you submitted a copy or representative sample of the remaining requested information. Consequently, we find the system failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal

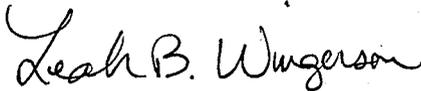
¹You state the system sought, but has not received, clarification from the requestor regarding a portion of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

presumption the requested 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 of the Government Code); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Because the system has failed to comply with the requirements of the Act, the system has waived its claims under sections 552.107 and 552.111, which are discretionary exceptions to disclosure. *See* Open Records Decision Nos. 676 at 12 (2002) (attorney-client privilege under section 552.107 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 in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception). We, therefore, conclude the system must release the requested information to the requestor pursuant to section 552.302.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 345712

c: Requestor