



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 31, 2009

Mr. Clark McCoy
Wolfe, Tidwell, & McCoy, L.L.P.
Attorney for City of Anna
2591 Dallas Parkway, Suite 205
Frisco, Texas 75034

OR2009-12245

Dear Mr. McCoy:

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# 353971.

The City of Anna (the "city"), which you represent, received a request for information regarding the requestor's water use from 2007-2009. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to this request as it was created after the city received the request. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request. Accordingly, we will address your arguments with regard to the responsive information.

Next, we must address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code § 552.301(b)*. Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) 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. *Id.* § 552.301(e). You state the city received the present request for information on June 10, 2009. However, you also explain, and provide documentation showing, the requestor made a request for information on May 27, 2009, for which the city sought clarification. *See id.* § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You contend the request received by the city on June 10, 2009 was a new request for information. Upon review of the submitted information, we do not agree. The city responded to the May 27, 2009 request for information on June 10, 2009, asking for clarification of the request. On the same day, the requestor sent a response, to which the city replied asking the requestor for further clarification. The requestor's response to the city's second request for clarification, which the city states it received on June 10, 2009, is the subject of this request for a ruling. Accordingly, we determine the requestor's final June 10, 2009 communication to the city was a clarification of the original May 27, 2009 request, rather than a new request for information.

When a governmental body requests a clarification under section 552.222, the deadlines of section 552.301(b) are tolled until the governmental body receives a response to its clarification request. *See* Open Records Decision No. 663 at 5 (1999) (clarification does not trigger a new ten business day time interval, but merely tolls the ten day deadline during the clarification or narrowing process, which resumes upon receipt of the clarification or narrowing response). The city sought and received clarification on the same business day, June 10, 2009. Accordingly, we conclude the ten-business-day time period was not tolled by the request for clarification. Thus, the ten-business-day deadline was June 10, 2009 and the fifteen-business-day deadline was June 17, 2009. However, the city did not request a ruling from this office until June 24, 2009 and did not provide a copy of the information at issue until July 1, 2009. Consequently, we conclude the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision.

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 information is public and must be released, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); ~~*see also* Open Records Decision No. 319 (1982).~~ Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where an exception designed to protect the interest of a third party is applicable. *See* Open Records Decision No. 150 at 2 (1977). You assert the submitted information is excepted under section 552.103. This section, however, is discretionary in nature. It serves only to protect a governmental body's interests, and may

be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, no portion of the submitted information may be withheld under section 552.103 of the Government Code. As you make no further arguments against disclosure of the responsive information, it must be released to the requestor.

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,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/eb

Ref: ID# 353971

Enc. Submitted documents

c: Requestor
(w/o enclosures)