



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 16, 2009

Mr. Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
Attorney for City of Richardson
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201

OR2009-14688

Dear Mr. Laughlin:

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# 358580.

The City of Richardson (the "city"), which you represent, received a request for information related to a specified "master plan meeting/briefing," including a list of attendees. You state that the city has released some responsive information. You claim that portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the city did not comply with section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(d) provides:

(d) A governmental body that requests an attorney general decision must provide to the requestor, not later than the 10th business day after the date of its receipt of the written request for information:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for an attorney general decision about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

Id. § 552.301(d). The city informs us that it received the present request on July, 29, 2009; thus, the city's ten business day deadline under section 552.301(d) was August 12, 2009. The requestor claims, and has provided documentation proving, that the city did not mail him a copy of the city's written communication to this office until August 13, 2009. Based on the requestor's arguments and our review, we agree that the city failed to comply with the procedural requirements of 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; the governmental body can overcome this presumption only by demonstrating a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason generally exists when third-party interests are at stake or when the information at issue is confidential under other law. Open Records Decision No. 150 (1977). In this instance, the city raises section 552.137 of the Government Code, which makes information confidential and, therefore, can provide a compelling reason to withhold the information at issue from disclosure. Accordingly, we will consider the city's argument under section 552.137.

Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). You state that the owners of the e-mail addresses you have marked have not consented to the release of their information. Furthermore, it does not appear that any of the e-mail addresses at issue are of a type listed in section 552.137(c). Therefore, the city must withhold the marked e-mail addresses under

section 552.137 of the Government Code. As you raise no further exceptions against disclosure, the city must release the remainder of the submitted information 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, toll free, at (888) 672-6787.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

Ref: ID# 358580

Enc. Submitted documents

cc: Requestor
(w/o enclosures)