



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-17163

Dear Ms. Byles:

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# 363078 (PIR No. 5251-09).

The City of Fort Worth (the "city") received a request for communications contained on a specified electronic device issued to a city employee over a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.111 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we must address the city's procedural obligations under the Act. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. 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). In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within

¹To the extent any additional responsive information existed on the date the city received this request, we assume the city has released it. If the city has not released any such records, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

fifteen business days of receiving an open records 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. *Id.* § 552.301(e)(1)(A)–(D).

We note that the city received the initial request for information on August 17, 2009 and that the city asked the requestor to clarify her request on August 27, 2009. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). In Open Records Decision No. 663 (1999), this office determined that during the interval in which a governmental body and a requestor communicate in good faith to narrow or clarify a request, the Act permits a tolling of the statutory ten-business-day deadline imposed by section 552.301. ORD 663 at 5 (ten-day deadline is tolled during process but resumes, upon receipt of clarification or narrowing response, on day that clarification is received). Thus, the ten-business-day time period to request a decision from this office under section 552.301(b) was tolled on the date that the city sought clarification of the request. *See Gov't Code* § 552.301(b). You inform us that the city received clarification from the requestor on September 2, 2009. Accordingly, we conclude that the ten-business-day time period for requesting a decision from our office resumed on September 3, 2009. You inform us that the city sent an estimate of charges to the requestor on September 3, 2009. We note that the provision of an itemized estimate of charges to a requestor under section 552.2615 does not excuse a governmental body from complying with its deadlines under section 552.301. *See id.* § 552.2615(g) (deadlines imposed by section 552.2615 do not affect application of time deadline imposed on governmental body under subchapter G of the Act). Therefore, the ten-business-day deadline was September 4, 2009, and the fifteen-business-day deadline was September 14, 2009.² However, the city did not request a ruling from this office until September 25, 2009, nor did it submit the responsive information until September 29, 2009. Consequently, we conclude that the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision.

A governmental body's failure to comply with the 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 id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 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). The presumption that information is public under section 552.302 can be overcome by demonstrating that the

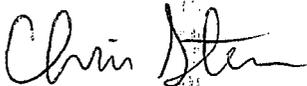
²You inform us that the city was closed on September 7, 2009, in observance of Labor Day.

information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). You claim the submitted information is excepted from disclosure under sections 552.111 and 552.116 of the Government Code. These sections are discretionary exceptions to disclosure that a governmental body may waive. *See* Gov't Code §. 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (waiver of discretionary exceptions), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111). Accordingly, the city may not withhold any of the information at issue under sections 552.111 or 552.116 of the Government Code. As you raise no further exceptions to disclosure, the submitted information 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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 363078

Enc. Submitted documents

c: Requestor
(w/o enclosures)