



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2009

Ms. Janice A. Cassidy
Janice Cassidy, P.C.
Attorney for City of San Benito
P.O. Box 592
San Benito, Texas 78586

OR2009-17249

Dear Ms. Cassidy:

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# 363528.

The City of San Benito (the "city"), which you represent, received a request for the city's former IT officer's name, dates of employment, and reason for leaving; the date of and reason for the city's IT audit; the name of and contact information for the IT auditor; the completed IT audit, and reports to the city commission regarding the IT audit. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e-1) provides the following:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. If the written comments disclose or contain the substance of the information

requested, the copy of the comments provided to the person must be a redacted copy.

Gov't Code § 552.301(e-1). While the city sent the requestor a copy of its written comments submitted to this office pursuant to section 552.301(e)(1)(A), the city redacted its discussion of the asserted exceptions from this copy. After review of the redacted portion of the city's brief, we conclude that the city redacted information from the requestor's copy that does not disclose or contain the substance of the information requested. Therefore, we conclude that the city failed to comply with the procedural requirements of section 552.301(e-1) of the Government Code.

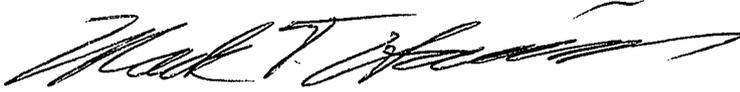
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 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). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you raise sections 552.103 and 552.108 of the Government Code as exceptions to disclosure of the requested information, these exceptions are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they generally do not constitute compelling reasons 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); Open Records Decisions Nos. 665 at n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). By failing to comply with the requirements of section 552.301, the city has waived its claims under sections 552.103 and 552.108. As you raise no other exceptions to disclosure, the submitted information must be released.

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,

A handwritten signature in black ink, appearing to read "Mack T. Harrison". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 363528

Enc. Submitted documents

c: Requestor
(w/o enclosures)