



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2009

Mr. Mario R. Gutierrez  
General Counsel  
Alamo Area Council of Governments  
8700 Tesoro, Suite 700  
San Antonio, Texas 78217

OR2009-17967

Dear Mr. Gutierrez:

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# 364997.

The Alamo Area Council of Governments (the "council") received a request for all individual score sheets, score tabulation, and voting records the council used to determine project rankings for the 2009 State Homeland Security Grant Program. You state you have provided the final project scores to the requestor. You claim that the remaining information is excepted from disclosure under sections 552.106 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of information.<sup>1</sup> We have also considered comments from the requestor. Gov't Code § 552.304(a) (authorizing person to submit written comments stating reasons why information at issue should or should not be released).

Initially, we address the requestor's contention that the council did not comply with the procedural requirements of the Act. The requestor asserts that the council failed to comply with sections 552.301(d) and 552.301(e-1) of the Government Code. Pursuant to

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<sup>1</sup>We assume that the "representative" sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. Gov't Code § 552.301(d). Section 552.301(e-1) requires a governmental body that submits written comments to the attorney general under subsection (e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business days of receiving the request for information. *Id.* § 552.301(e-1).

The council received the request for information on September 28, 2009. Therefore, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was October 12, 2009, and the fifteen-business-day deadline to provide information to the requestor pursuant to section 552.301(e-1) was October 19, 2009.<sup>2</sup> The requestor asserts and provides documentation showing that he was not provided with a copy of the council's communications with our office until October 20, 2009, when the council sent him an e-mail with their communications to this office attached. Upon review, we find that the council failed to comply with the requirements of sections 552.301(d) and 552.301(e-1) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to provide the requestor with information required in sections 552.301(d) and 552.301(e-1) results in the legal 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* Gov't Code § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App. – Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). 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 council has failed to comply with the requirements of the Act, the council has waived its claim under sections 552.106 and 552.111, which are discretionary exceptions to disclosure. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552:111 subject to waiver). Therefore we conclude the council must release the requested information to the requestor pursuant to section 552.302 of the Government Code.

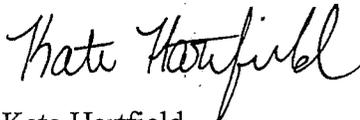
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<sup>2</sup>We note that although you state federal mail offices were closed on October 12, 2009, you do not inform us that *your* office was closed for business on that date.

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](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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/eeg

Ref: ID# 364997

Enc. Submitted documents

c: Requestor  
(w/o enclosures)