



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2011

Mr. Gregory T. Mays
General Counsel
Dallas Housing Authority
3939 North Hampton Road
Dallas, Texas 75212

OR2011-03971

Dear Mr. Mays:

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# 412101.

The Dallas Housing Authority (the "authority") received a request for proposals submitted in response to a specified request for proposal.¹ You claim that the requested information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim.

We must address the authority's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Section 552.301(e) of the Government Code requires submission to this office within fifteen business days of receiving the 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 written request was received, and (4)

¹As you have not submitted the request for information for our review, we take our description from your January 12, 2011 letter to our office.

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 authority received the request for information on December 28, 2010. Because you do not inform this office the authority was closed for business any days between December 29, 2010 and January 19, 2011, we find the authority's ten- and fifteen-business-day deadlines were January 11, 2011 and January 19, 2011, respectively. However, you did not request a ruling from this office and state exceptions that apply until January 12, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Furthermore, as of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, a copy of the request for information, or a copy or representative sample of the information requested. Consequently, we find the authority failed to comply with the requirements of section 552.301.

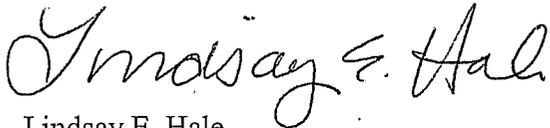
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.104 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the authority also raises section 552.101 of the Government Code, which can provide a compelling reason, you have not submitted the requested information for our review and, therefore, we have no basis for finding any of the information confidential by law. Accordingly, we find the authority must release the requested information to the requestor pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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 cursive script that reads "Lindsay E. Hale".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 412101

c: Requestor