



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 29, 2011

Mr. John Knight  
Deputy City Attorney  
City of Denton  
215 East McKinney  
Denton, Texas 76201

OR2011-04326

Dear Mr. Knight:

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# 412605.

The City of Denton (the "city") received two requests from the same requestor for all Trackit, letters, and e-mails sent from certain individuals and departments identified on a second page of the requests during a specified time period and about a specified property and all letters, Trackit, and e-mails about the requestor from the same individuals and departments during the same time period.<sup>1</sup> You state you are releasing some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.108, 552.111 of the Government Code.<sup>2</sup> We have considered the exceptions

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<sup>1</sup>You state the city sought and received clarification from the requestor regarding the requests. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<sup>2</sup>Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). In this instance, your attorney-client and attorney work product privilege claims are properly addressed under sections 552.107 and 552.111 of the Government Code, respectively.

you claim and reviewed the submitted representative sample of information.<sup>3</sup> We have also received and 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).

We must address the city's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit 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 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. *See id.* § 552.301(e). The city received the requests for information on January 3, 2011. The city asked for clarification of the requests on January 13, 2011. You state the city received clarification of the requests on January 19, 2011.<sup>4</sup> While you submitted the first page of both requests on January 21, 2011, you did not submit the second page of either request to this office until March 21, 2011. Consequently, we find the city 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 submit to this office the information required in section 552.301(e) 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 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); *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* ORD 630. You assert the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.108, and 552.111 of the Government Code. However, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and generally are not compelling

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<sup>3</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 those records contain substantially different types of information than that submitted to this office.

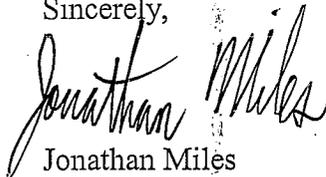
<sup>4</sup>*See* Gov't Code § 552.222(b). *See also* *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex.2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

reasons to withhold information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 12 (2002) (attorney-client privilege under section 552.107 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party), 665 at 2 n.5 (2000) (untimely request for decision results in waiver of discretionary exceptions), 663 at 5 (1999) (governmental body may waive section 552.111), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). In failing to comply with section 552.301, the city has waived its claims under sections 552.103, 552.107, 552.108, and 552.111, and may not withhold the submitted information on the basis of these exceptions. As you claim 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](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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 412605

Enc. Submitted documents

c: Requestor  
(w/o enclosures)