



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2011

Mr. Benjamin V. Lugg
San Antonio Housing Authority
818 South Flores Street
San Antonio, Texas 78204

OR2011-09952

Dear Mr. Lugg:

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# 423669.

The San Antonio Housing Authority (the "authority") received a request for five categories of information related to a specified request for proposals. You claim the requested information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.107, 552.110, 552.111, 552.117, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim.

Section 552.301 of the Government Code prescribes the 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(e), a governmental body that receives a request for information it wishes to withhold under an exception to disclosure 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,

¹Although you claim exceptions under sections 552.021 and 552.301 of the Government Code, we note that these are not exceptions to disclosure under the Act. Section 552.021 provides for the availability of public information, and section 552.301 prescribes the procedures that a governmental body must following in asking this office for a ruling under the Act. See Gov't Code §§ 552.021, .301.

labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). The authority received the request for information on May 2, 2011. Thus, the authority was required to submit the information required by section 552.301(e) by May 23, 2011. As of the date of this letter, you have not submitted written comments stating the reasons why the claimed exceptions apply or a copy or representative sample of the specific information requested. Consequently, we find the authority failed to comply with the requirements of section 552.301(e) 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, unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 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 (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 exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You claim the requested information is excepted from disclosure under sections 552.103, 552.104, 552.107, and 552.111 of the Government Code. However, these are all discretionary exceptions to disclosure, which may be waived. *See* Gov't Code § 552.007; *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. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (governmental body may waive sections 552.107 and 552.111), 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government). In failing to comply with the procedural requirements of section 552.301 of the Government Code, you have waived all of your discretionary exceptions. Thus, the authority may not withhold any of the requested information under sections 552.103, 552.104, 552.107, or 552.111 of the Government Code.

Sections 552.101, 552.110, 552.117, and 552.130 all provide a compelling reason to overcome the presumption of openness. However, because you have not submitted the requested information to this office for our review, we have no basis for finding it confidential under any of the claimed mandatory exceptions. Thus, we have no choice but to order you to release the responsive information in accordance with 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 black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 423669

No enclosures

c: Requestor