



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2012

Mr. Tommy L. Coleman
Assistant District Attorney
Williamson County
405 M.L.K., No. 1
Georgetown, Texas 78626

OR2012-00858A

Dear Mr. Coleman:

This office issued Open Records Letter No. 2012-00858 (2012) on January 18, 2012. We have examined this ruling and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on January 18, 2012.

You ask whether certain information is subject to required public disclosure under the Act. Your request was assigned ID# 449564.

The Williamson County District Attorney's Office (the "district attorney") received a request for (1) all documentation that discloses the results of a specified investigation, (2) all correspondence sent to or received from certain individuals and entities pertaining to a specified subject during a specified time period, (3) all inquiries regarding a specified subject or a specified investigation during a specified time period, and (4) all responses made by the district attorney to the inquiries at issue. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We

have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See id.* § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

Initially, we note the district attorney has only submitted one memorandum for our review. To the extent any additional information responsive to the request existed on the date the district attorney received the request, we assume you have released it. If you have not released such information, you must do so at this time. *Id.* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We must address the district attorney's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act 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. *Id.* § 552.301(e). The district attorney states it received the request for a ruling on November 3, 2011. However, the district attorney did not submit a copy of the written request for information until January 26, 2012. *See id.* § 552.308 (describing rules for calculating submission dates for documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the district attorney 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 section 552.301 results in the legal presumption the information is public and must be released. Information 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.108 and 552.111 of the Government Code, these exceptions are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 677

at 10 (2002) (attorney work-product privilege under section 552.111 is not compelling reason to withhold information under section 552.302), 663 at 5 (1999) (governmental body may waive sections 552.107 and 552.111), 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). In failing to comply with section 552.301, the district attorney has waived its claims under sections 552.108 and 552.111 of the Government Code. Therefore, none of the submitted information may be withheld under those exceptions. As no further exceptions to disclosure have been raised, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/dls

Ref: ID# 449564

Enc. Submitted documents

c: Requestor
(w/o enclosures)