



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2013

Mr. Joshua Haley
Staff Attorney
Intergovernmental Risk Pool
Texas Municipal League
P.O. Box 149194
Austin, Texas 78714-9194

OR2013-00622

Dear Mr. Haley:

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# 475557.

The Texas Municipal League Intergovernmental Risk Pool (the "TML") received two requests from the same requestor for information pertaining to subrogation and the subrogation files of the TML. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments to this office stating why the information at issue should or should not be released).

We must address the TML's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). You state the TML received the request for information on October 15, 2012; therefore, the ten-business-day deadline was October 29, 2012. Your letter requesting a decision from this office was submitted to this office in an envelope postmarked October 30, 2012. *See id.* § 552.308 (describing rules for

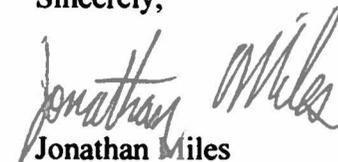
calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, the TML failed to request a decision from this office within the ten-business-day period prescribed by subsection 552.301(b).

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 overcomes this presumption by demonstrating a compelling reason to withhold the information. *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 552.103 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; *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. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the TML may not withhold the submitted information under section 552.103 of the Government Code. As the TML claims no other exception 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, 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/bhf

Ref: ID# 475557

Enc. Submitted documents

c: Requestor
(w/o enclosures)