



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2013

Mr. Daniel W. Ray
Scott, Money & Ray, P.L.L.C.
P.O. Box 1353
Greenville, Texas 75403-1353

OR2013-13170

Dear Mr. Ray:

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# 495223.

The City of Greenville (the "city"), which you represent, received a request for specified communications between named individuals for a specified period of time. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim.

We must address the city's procedural obligations under section 552.301 of the Government Code, which 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(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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 city received the request for information on May 8, 2013. You state that on May 22, 2013, the city provided the requestor with a cost estimate pursuant to

section 552.2615 of the Government Code and, on May 24, 2013, you state the requestor complied with section 552.2615 by accepting the charges. *See id.* § 552.2615(a),(b). We note section 552.2615 of the Government Code provides the submission of an estimate of charges to the requestor does not start over or toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See id.* § 552.2615(g) ("The time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G [of the Act]."). Thus, the request for information was received on May 8, 2013, and the city's ten-business-day deadline and fifteen-business-day deadline were, respectively, May 22, 2013, and May 30, 2013.¹ However, the envelope in which the city submitted its request for a ruling bears a postmark of May 28, 2013. *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, the city has not submitted written comments regarding the stated exceptions or a copy or representative samples of the requested information. Therefore, the city failed to comply with the procedural requirements mandated by 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 that 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 (Tex. App.—Austin 1990, no writ); *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* Open Records Decision No. 150 (1977). Section 552.107 of the Government Code is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Section 552.101 of the Government Code is a mandatory exception to disclosure. However, because you have not submitted a copy or representative sample of the information at issue for our review, we have no basis for finding any of the requested information excepted from required disclosure or confidential by law. Therefore, we must order the city to release the information at issue pursuant to section 552.302 of the Government Code. If you believe the information is

¹You inform us the city was closed on May 27, 2013. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 495223

c: Requestor