



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2014

Ms. Elizabeth Conry Davidson
Counsel for the Bexar Appraisal District
Attorney at Law
926 Chulie Drive
San Antonio, Texas 78216

OR2014-08748

Dear Ms. Davidson:

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# 523415 (PIA Nos. 1722 and 1847).

The Bexar Appraisal District (the "district"), which you represent, received two requests, from the same requestor, for (1) information regarding a specified e-mail stream and all documents associated with the specified e-mail stream which were previously provided to the San Antonio Express News and opposing counsel in various discovery responses over a specified period of time, and (2) two specified logs, documents produced in discovery by either a specified law firm or the district pertaining to specified cases, and all open records requests from a specified organization or named individuals over a specified period of time. You inform us some of the requested information was destroyed due to the district's record retention policy.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismiss'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered the requestor's comments. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, the requestor asserts, and you acknowledge, some of the information at issue has been previously released to the media. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the district may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise sections 552.107 and 552.111 for the information at issue, these sections do not prohibit the release of information or make information confidential. *See* ORDs 677 at 10, 676 at 10-11; *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the district may not withhold the previously released information under section 552.107 or section 552.111 of the Government Code. Therefore, to the extent the district previously released any of the submitted information to a member of the public, the district may not now withhold any such information from the present requestor under section 552.107 or section 552.111 of the Government Code.

We must address the district's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures 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). Pursuant to section 552.301(e) of the Government Code, a governmental body is required to 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

²Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, Texas Rule of Civil Procedure 192.5, and Texas Disciplinary Rule of Professional Conduct 1.05, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 677 (2002), 676 at 1-2 (2002), 575 at 2 (1990). Furthermore, we note the proper exceptions to raise when asserting the attorney-client privilege and the attorney work product privilege for information not subject to section 552.022 of the Government Code are sections 552.107 and 552.111 of the Government Code, respectively. ORDs 677 (2002), 676 at 1-2.

information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). You state the district received the first request for information on February 13, 2014. You explain, and submit documentation showing, the district sought clarification of the first request from the requestor, and the requestor responded to this request for clarification on February 28, 2014. *See id.* § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). The district states it received the second request for information on March 13, 2014. You inform us, and submit documentation demonstrating, you sought clarification of the second request, and received clarification from the requestor on March 31, 2014. *See id.* Accordingly, in regards to the first request, your ten-business-day and fifteen-business-day deadlines, were, respectively, March 14, 2014 and March 21, 2014. In regards to the second request, your ten-business-day and fifteen-business day deadlines were, respectively, April 14, 2014 and April 21, 2014. Although the district timely submitted some information in response to the first request, this information was previously released and is subject to section 552.007 of the Government Code. We note, however, on May 9, 2014, the district submitted additional information not subject to section 552.007 which is responsive to both the first and second requests. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code with respect to this information.

A governmental body's failure to comply with section 552.301 results in the waiver of its untimely claim, unless that claim is a compelling reason for withholding information from disclosure. *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). 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. Open Records Decision No. 150 at 2 (1977). Although you assert the information at issue is excepted from release under sections 552.107 and 552.111 of the Government Code, these sections are discretionary in nature and serve only to protect a governmental body's interests. As such, the district's claims under these sections are not compelling reasons to overcome the presumption of openness. *See* ORDs 676 at 12 (attorney-client privilege under section 552.107 does not constitute compelling reason to withhold information under section 552.302 if it does not implicate third party rights), 677 at 10 (attorney work-product privilege under section 552.111 is not compelling reason to withhold information under section 552.302); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions

in general). Because you failed to comply with section 552.301, you have waived your claims under sections 552.107 and 552.111 of the Government Code. However, sections 552.136 and 552.137 of the Government Code can provide compelling reasons against disclosure.³ Accordingly, we will address their applicability to the information at issue.

Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the district must withhold the access device numbers we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the district must withhold the personal e-mail addresses you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the district must withhold (1) the information we have marked under section 552.136 of the Government Code; and (2) the e-mail addresses you have marked, and the additional e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure. The district must release the remaining information.⁴

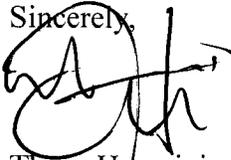
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴We note the information being released contains the requestor’s e-mail address to which he has a right of access. *See* Gov’t Code § 552.137(b). However, if the district receives another request for this information from a different requestor, we note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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 'Thana Hussaini', written over the word 'Sincerely,'.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 523415

Enc. Submitted documents

c: Requestor
(w/o enclosures)