



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2014

Mr. Todd Kimbrough
General Counsel
Lubbock Power & Light
P.O. Box 2000
Lubbock, Texas 79457

OR2014-13549

Dear Mr. Kimbrough:

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# 531657.

The City of Lubbock (the "city") received a request for information pertaining to a named law firm's investigation of Lubbock Power and Light, a municipally-owned electric utility. You state some information has been released to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.103 and 552.104 of the Government Code.¹ We have considered the exceptions you claim.

We must address the city'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. 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 the request (1) written comments stating the reasons why the

¹Although you also raised section 552.107(1) of the Government Code, you did not provide any arguments regarding the applicability of this section. Therefore, we assume you have withdrawn your claim under this exception. See Gov't Code §§ 552.301, .302.

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. *See* Gov't Code § 552.301(e). You inform us the city received the request for information on May 14, 2014. However, as of the date of this letter, you have not submitted for our review a copy or representative sample of the requested information. Consequently, we find the city 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 the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Although you assert the information at issue is excepted from disclosure under sections 552.103 and 552.104 of the Government Code, these exceptions are discretionary in nature and serve only to protect a governmental body's interests. As such, the city's claims under these exceptions are not compelling reasons to overcome the presumption of openness. *See 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), 592 (1991) (stating that governmental body may waive section 552.104). Thus, in failing to comply with section 552.301, the city has waived its arguments under these exceptions and may not withhold the submitted information on those bases. Therefore, we have no choice but to order you to release the requested 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.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 cursive script, appearing to read "Lee Seidlits", with a horizontal line extending from the end of the signature.

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 531657

c: Requestor