



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 2, 2014

Mr. Jeffrey W. Giles
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2014-17529

Dear Mr. Giles:

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# 540336 (GC No. 21640).

The City of Houston (the "city") received a request for the actual and proposed locations of a specified recycling facility. You claim the requested information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b).

You state the city received the present request for information on July 28, 2014. Thus, the city's ten-business-day deadline was August 11, 2014. However, the envelope in which the city submitted the request for a ruling bears a meter-mark of August 14, 2014. *See id.* § 552.308(a) (deadline under Act is met if document bears post office mark indicating time within deadline period). Consequently, we find the city failed to comply with section 552.301 of the Government Code in requesting a ruling from this office.

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 requested information is public and must be released unless a compelling reason exists to withhold the 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); 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 the city claims section 552.104 of the Government Code, section 552.104 is not a compelling reason to overcome the presumption that arises under section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 592 (1991) (governmental body may waive statutory predecessor to section 552.104). Thus, in failing to comply with section 552.301, the city has waived its claim under section 552.104 and may not withhold the information at issue on that basis. As you raise no other exception to disclosure, the city must release the submitted information.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 540336

Enc. Submitted documents

c: Requestor
(w/o enclosures)