



February 18, 2015

Mr. W. Ken Johnson
City Attorney
City of Kyle
P.O. Box 40
Kyle, Texas 78640

OR2015-03205

Dear Mr. Johnson:

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# 553934.

The City of Kyle (the "city") received a request for information. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim.

We must address the city's 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 subsection 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 exception applies to which parts of the documents. *See Gov't Code § 552.301(e)*. The city submitted a request for a ruling to this office on December 5, 2014. As of the date of this letter, the city has not submitted to this office written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, a copy of the written request for information, a signed statement or sufficient evidence showing the date the city received the written request, or a copy of the specific information requested or representative samples. Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of 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); *see also* Open Records Decision No. 630 (1994). Generally, 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 raise section 552.103 of the Government Code for the requested information, this section 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. *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 generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, the city has waived its claim under section 552.103 for the requested information. Accordingly, we have no choice but to order the requested information released pursuant to section 552.302.

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,



Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/cbz

Ref: ID# 553934

Enc. Submitted documents

c: Requestor
(w/o enclosures)