



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2015

Ms. Mary Ann Powell
Counsel for City of Spring Valley Village
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2015-05108

Dear Ms. Powell:

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# 556659 (Reference SVV14-019).

The City of Spring Valley Village (the "city"), which you represent, received a request for six categories regarding Lone Star Animal Recovery and four categories of information pertaining to the trapping or removal of coyotes. You state the city will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.

Next, the requestor asserts she was not timely notified as required by section 552.301(d) of the Government Code. *See id.* § 552.301(d) (governmental body must provide requestor with copy of governmental body's written communication to attorney general asking for decision). Pursuant to section 552.302, a governmental body's failure to timely provide the requestor with a copy of its written communication to this office results in the presumption

that the information is public. In this instance, the city received the original request for information on December 20, 2014. We note December 20, 2014, was a Saturday; therefore, for purposes of the Act, we find the city is deemed to have received the request on Monday, December 22, 2014. You indicate the city was closed on December 25, 2014, and January 1, 2015. This office does not count the date the request was received or any dates the governmental body was closed as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the city's ten-business-day deadline was January 7, 2015. The requestor contends, and provides documentation demonstrating, that the city did not send her a copy of the city's request for a ruling until January 12, 2015. Consequently, we conclude that the city did not comply with section 552.301 of the Government Code. *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).

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 sections 552.107 and 552.111 of the Government Code for the submitted information, these exceptions are discretionary in nature. These sections serve only to protect a governmental body's interests, and may be waived; as such, they do not constitute compelling reasons to withhold information. *See* Open Records Decision Nos. 676 at 6 (2002) (section 552.107(1) is not other law for purposes of section 552.022), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the city has waived its claims under sections 552.107 and 552.111 for the responsive information. As you raise no further exceptions to disclosure, the responsive information must be released.

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 "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 556659

Enc. Submitted documents

c: Requestor
(w/o enclosures)