



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2015

Ms. Elizabeth West
Senior Attorney
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

OR2015-08104

Dear Ms. West:

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# 564653 (TCEQ PIR# 15-20874).

The Texas Commission on Environmental Quality (the "commission") received a request for all communications or other legal documents which refer to the requestor since March 1, 2011. You state you have released some information but claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the commission's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that 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. Gov't Code § 552.301(b). You assert the commission received the request for information on March 3, 2015. Thus, the commission's ten-business-day deadline to request a ruling was March 17, 2015. However, this office received the commission's request for a ruling in interagency mail on March 19, 2015.¹ See Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent by state agency via

¹We note the commission's request for a ruling from this office is dated March 18, 2015.

interagency mail). Therefore, the commission failed to comply with the procedural requirements mandated by section 552.301(b).

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 the governmental body demonstrates a compelling reason 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.107 of the Government Code is discretionary in nature; it serves only to protect a governmental body's interests. As such, the commission's claims under this section are not a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 676 at 12 (2002) (attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the commission may not withhold any of the submitted information under section 552.107. Accordingly, as you raise no further exceptions to disclosure, the commission must release the submitted information to the requestor.

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 564653

Enc. Submitted documents

c: Requestor
(w/o enclosures)