



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 29, 2015

Ms. Jacqueline E. Hojem  
Public Information Coordinator  
Metropolitan Transit Authority of Harris County  
P.O. Box 61429  
Houston, Texas 77208-1429

OR2015-10510

Dear Ms. Hojem:

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# 565314 (MTA No. 2015-0174).

The Metropolitan Transit Authority of Harris County (the "authority") received a request for specified policies and procedures, any disparate impact analysis conducted as part of a specified project, and any environmental justice analysis conducted as part of the specified project. You state the authority has made some information available to the requestor. You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must address the authority'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. *See* Gov't Code § 552.301. 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. *See id.* § 552.301(b). Further, pursuant to section 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 exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the authority received the request for information on March 6, 2015. You do not inform us the authority was closed for any business days between March 6, 2015, and March 27, 2015. Accordingly, you were required to provide the information required by section 552.301(b) by March 20, 2015. Moreover, you were required to provide the information required by section 552.301(e) by March 27, 2015. However, the envelopes in which the authority provided the information required by sections 552.301(b) and 552.301(e) were postmarked March 23, 2015, and March 30, 2015, respectively. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the authority failed to comply with the procedural requirements mandated by 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 procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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). 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* Open Records Decision No. 630 (1994). Section 552.111 is a discretionary exception to disclosure and may be waived. *See* Open Records Decision Nos. 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver), 677 at 10 (2002) (attorney work product privilege under section 552.111 may be waived). Thus, section 552.111 does not provide a compelling reason to withhold information. Because the authority has failed to comply with the procedural requirements of the Act, the authority has waived its claim under section 552.111 of the Government Code. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Thus, we have no choice but to order the submitted 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](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 'Cristian Rosas-Grillet', with a stylized flourish at the end.

Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/cbz

Ref: ID# 565314

Enc. Submitted documents

c: Requestor  
(w/o enclosures)