



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 3, 2015

Ms. Claudene Marshall
Assistant General Counsel
Office of General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2015-10858

Dear Ms. Marshall:

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# 565745 (TAMU ID# 15-186).

The Texas A&M University System (the "system") received a request for all documents related to estimating the cost of a specified piece of legislation. You 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 system'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 system received the request for information on March 10, 2015. Thus, the system's ten-business-day deadline to request a ruling was March 24, 2015. However, the system submitted the information required under section 552.301(b) in an envelope bearing a contract carrier receipt date of March 27, 2015. *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). Therefore, the system 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 a result, the system'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 system may not withhold any of the information you marked under section 552.107. We note, however, some of the submitted information is subject to section 552.137 of the Government Code, which can provide a compelling reason to overcome the presumption of openness caused by the system's failure to comply with section 552.301 of the Government Code. *See* Gov't Code §§ 552.007, .302, .352.¹

Section 552.137 of the Government Code provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov't Code § 552.137(a)–(c). The system must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its release. Accordingly, as you raise no further exceptions to disclosure, the system must release the remaining 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 'JB', with a long horizontal flourish extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 565745

Enc. Submitted documents

c: Requestor
(w/o enclosures)