



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 2, 2015

Ms. Kristen N. Lee
Assistant County Attorney
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

OR2015-13411

Dear Ms. Lee:

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# 569977 (C.A. File No. 15PIA0149).

The Harris County Flood Control District (the "district") received a request for a list of properties being purchased for public use and the offer amount for each.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must address the district's 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. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. Gov't Code

¹As you have not submitted a copy of the request for information for our review, we take our description from your brief to our office.

§ 552.301(e)(1). You state the district received the request for information on April 13, 2015. As of the date of this letter, you have not provided this office with a copy of the written request for information, as required. Thus, we find the district has violated section 552.301(e).

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 information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *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); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.105 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). Thus, the district may not withhold any of the submitted information pursuant to section 552.105 of the Government Code. As no other exceptions to disclosure have been raised, the submitted 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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 569977

Enc. Submitted documents

c: Requestor
(w/o enclosures)