



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 18, 2015

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2015-19528

Dear Ms. Silver:

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# 580175.

The City of Dallas (the "city") received a request for information pertaining to a specified city council meeting agenda item. The city claims the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code and privileged under Texas Rule of Evidence 503 and Texas Disciplinary Rule of Professional Conduct 1.05. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Initially, the city acknowledges, and we agree, it failed to comply with the procedural requirements of section 552.301(e) of the Government Code. *See* Gov't Code § 552.301(e). 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

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982).

Section 552.101 of the Government Code can provide a compelling reason to overcome this presumption. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This office has concluded section 552.101 does not encompass discovery privileges. Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990) (predecessor statute). Nevertheless, the city asserts Exhibit B is confidential under the attorney-client privilege for purposes of section 552.101 on the basis of the decisions in *Abbott v. City of Dallas*, 453 S.W.3d 580 (Tex. App.—Austin 2014, pet. filed) and *City of Dallas v. Paxton*, No. 13-13-00397-CV, 2015 WL 601974 (Tex. App.—Corpus Christi Feb. 12, 2015, pet. filed) (mem. op.). However, we note a petition for review for the *Abbott* decision was filed with the Texas Supreme Court on March 9, 2015, and a petition for review for the *Paxton* decision was filed with the Texas Supreme Court on March 26, 2015. Thus, we find these decisions are limited to the facts and information at issue in the underlying letter rulings, and do not apply to the information currently at issue. Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503 or Texas Disciplinary Rule of Professional Conduct 1.05. In addition, sections 552.107 and 552.111 of the Government Code are discretionary in nature; they serve only to protect a governmental body’s interests. As such, the city’s claims under these sections are not compelling reasons to overcome the presumption of openness. *See* Open Records Decision 676 at 12 (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), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the city may not withhold any of the submitted information under section 552.107 or 552.111. Consequently, the city must release the requested information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 580175

Enc. Submitted documents

c: Requestor
(w/o enclosures)