



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2015

Ms. Stacie S. White
Counsel for Town of Flower Mound
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2015-23096

Dear Ms. White:

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# 585636.

The Town of Flower Mound (the "town"), which you represent, received a request for four categories of e-mails sent or received during specified time periods. You claim the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

Initially, we must address the town's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state the town received the request for information on August 6, 2015. Accordingly, the town's ten-business-day deadline was August 20, 2015. However, the envelope in which you requested a decision was meter-marked August 27, 2015. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the town failed to comply with the requirements of section 552.301 in requesting this decision from our office.

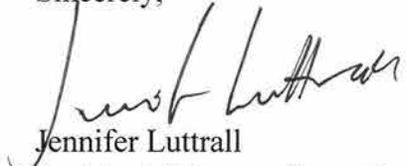
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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, 381-82 (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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you claim the submitted information is excepted from disclosure under section 552.107(1) of the Government Code, this section is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, in failing to comply with section 552.301, the town has waived its claim under section 552.107(1). Therefore, the town may not withhold any portion of the submitted responsive information under section 552.107 of the Government Code. However, you claim the submitted information is subject to section 552.101 of the Government Code. Because this section can provide a compelling reason for non-disclosure, we will address its applicability to the submitted information.

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, 575 at 2 (1990) (predecessor statute). Nevertheless, the town asserts the submitted information is confidential under the attorney-client privilege for purposes of section 552.101 on the basis of the decision in *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 *Paxton* decision was filed with the Texas Supreme Court on March 26, 2015. Thus, we find this decision is limited to the facts and information at issue in the underlying letter ruling, and does not apply to the information currently at issue. Accordingly, the town may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503. Consequently, the town must release the submitted 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 585636

Enc. Submitted documents

c: Requestor
(w/o enclosures)