



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2015

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

OR2015-26188

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# 590613 (C.A. File No. 15PIA0407).

The Harris County Sports and Convention Corporation (the "corporation") received a request for all e-mails concerning a specified stadium's turf.¹ The corporation claims the submitted information is exempted from disclosure under sections 552.105, 552.111, and 552.131 of the Government Code. We have considered the exceptions the corporation claims.

We must address the corporation's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. 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

¹Since the corporation did not submit the requestor's written request for information, we take our description from the corporation's brief to this office.

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* Gov't Code § 552.301(e). The corporation received the request for information on September 18, 2015. However, as of the date of this letter, the corporation has not submitted for our review written comments stating the reasons why the stated exceptions apply, a copy of the written request for information, or a copy or representative sample of the information requested. Consequently, we find the corporation failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with 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). Because the corporation has failed to comply with the procedural requirements of the Act, it has waived its claims under sections 552.105, 552.111, and 552.131(b) of the Government Code. *See* Open Records Decision No. 677 at 8-10 (2002) (attorney work product privilege under section 552.111 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Although section 552.131(a) of the Government Code can provide a compelling reason to overcome the presumption of openness, because the corporation has not submitted the requested information for our review, we have no basis for finding any of the information is excepted from disclosure or confidential by law. Thus, we have no choice but to order the corporation to release the requested information pursuant to section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 590613

Enc. Submitted documents

c: Requestor