



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 9, 2016

Ms. Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR2016-10480

Dear Ms. Escobar:

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# 609250 (TDA PIR# 16-497).

The Texas Department of Agriculture (the "department") received a request for information pertaining to the trip to Oklahoma taken by the commissioner and e-mails sent or received by the commissioner or any of eight named individuals on any of three specific dates. The department states it has released some information. The department claims the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

We must address the department's 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. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, a governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving a request. *See id.* § 552.301(b). The department states it received the request for information on February 15, 2016. The department states it was closed on

February 15, 2016, in observance of President's Day. This office does not count the date the request was received or holidays the governmental body was closed for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the ten-business-day deadline for requesting a ruling from this office was March 1, 2016. This office received the department's request on March 2, 2016. The envelope in which the department submitted the request for a ruling under section 552.301 does not bear a post meter mark, nor has the department provided sufficient evidence to establish the request for a ruling was deposited in the interagency mail by March 1, 2016. *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 department failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

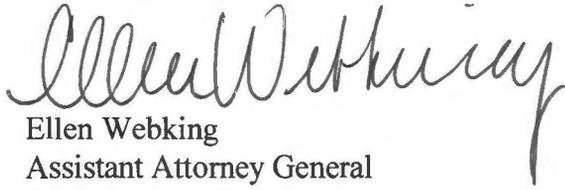
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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); Open Records Decision No. 319 (1982). 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). Although the department claims the submitted information is excepted from disclosure under section 552.111 of the Government Code, this is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions, governmental body may waive section 552.111), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Thus, in failing to comply with section 552.301, the department has waived its claim under section 552.111 of the Government Code. Accordingly, none of the submitted information may be withheld under section 552.111 of the Government Code. As the department raises no further exceptions against disclosure, 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,

A handwritten signature in cursive script, appearing to read "Ellen Webking".

Ellen Webking
Assistant Attorney General
Open Records Division

EW/som

Ref: ID# 609250

Enc. Submitted documents

c: Requestor
(w/o enclosures)