



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 12, 2016

Ms. Jessica Vu  
Assistant General Counsel  
Office of Governor Greg Abbott  
P.O. Box 12428  
Austin, Texas 78711

OR2016-10919

Dear Ms. Vu:

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# 610055 (OOG ID#s 16-058 and 16-062).

The Office of the Governor (the "governor's office") received two requests from the same requestor for all records pertaining to a specified appointment to the Texas Workforce Commission.<sup>1</sup> You state you will release most of the requested information with redactions made pursuant to sections 552.024(c) and 552.130(c) of the Government Code and Open Records Decision No. 684 (2009).<sup>2</sup> You claim the submitted information at issue is excepted

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<sup>1</sup>As you have not submitted the first request for information for our review, we take our description from correspondence from the requestor to our office.

<sup>2</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

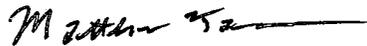
We must address the obligations of the governor's office under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental 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. *Id.* § 552.301(e)(1). You state the governor's office received the first request for information on February 22, 2016. However, as of the date of this letter, you have not submitted to this office a copy of the first request for information. Consequently, we find the governor's office failed to comply with the requirements of 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 the deliberative process privilege encompassed by section 552.111 of the Government Code, this section is a discretionary exception to disclosure 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), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Thus, in failing to comply with section 552.301, the governor's office has waived its argument under section 552.111, and may not withhold the information submitted in response to the first request on that basis. We note in waiving its section 552.111 claim for the information responsive to the first request, the governor's office has also waived its section 552.111 claim for this same information with respect to the second request for information. As you raise no further exceptions to disclosure for this information, it 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](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 black ink, appearing to read "Matthew Taylor", followed by a horizontal line.

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/dls

Ref: ID# 610055

Enc. Submitted documents

c: Requestor  
(w/o enclosures)