



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2016

Mr. Darin Darby
Counsel for the Laredo Housing Authority
Escamilla & Poneck, L.L.P.
700 North Saint Mary's Street, Suite 850
San Antonio, Texas 78205

OR2016-15321

Dear Mr. Darby:

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# 617290.

The Laredo Housing Authority (the "authority"), which you represent, received a request for all communications by two named individuals made prior to a specified authority board meeting. You claim the requested information is excepted from disclosure under sections 552.101 through 552.153 of the Government Code. We have considered your arguments.

Initially, you state the authority sought clarification with respect to the request for information. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You inform this office the authority has not received a response to its request for clarification from the requestor. Thus, the authority has no obligation at this time to release information that might be responsive to any portion of the request for which the authority sought clarification and has not received a response. However, if the requestor clarifies the request for information, the authority must seek a ruling from this office before withholding any responsive information from the requestor. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010).

With respect to any responsive information for which the authority did not request clarification, we must address the authority's obligations under section 552.301 of the

Government Code. Section 552.301 prescribes the procedures that 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. Gov't Code § 552.301(e)(1). You state the authority received the present request for information on April 15, 2016. However, as of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, nor have you submitted a copy or representative sample of the information requested. Consequently, we find the authority 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 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 authority has failed to comply with the procedural requirements of the Act, it has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the authority also raises mandatory exceptions to disclosure, because the authority 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 authority 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.

In summary, the authority has no obligation at this time to release information that might be responsive to any portion of the request for which the authority sought clarification and has not received a response. With respect to any responsive information for which the authority did not request clarification, the authority must release the responsive information pursuant to section 552.302 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,

A handwritten signature in black ink, appearing to read "M. Taylor", with a long horizontal flourish extending to the right.

Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 617290

c: Requestor