



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 8, 2016

Ms. Carah-Beth Bass  
For Bandera County  
Allison, Bass & Magee, L.L.P  
402 West 12<sup>th</sup> Street  
Austin, Texas 78701

OR2016-17769

Dear Ms. Bass:

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# 621648.

Bandera County (the "county"), which you represent, received a request for nine categories of records concerning cattle guards maintained on a specified road in the county. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have received comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You assert the present request attempts to circumvent the discovery process. You state the submitted information pertains to a lawsuit against the county, and the discovery for this suit was conducted under a Level 2 Discovery Control Plan. You argue legal authority already exists which governs the production of documents in the lawsuit. Section 552.0055 of the Government Code provides "[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under this chapter." Gov't Code § 552.0055. This section does not apply in all instances in which a governmental body could have received such a subpoena or discovery request. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature's intent is served by beginning with statute's plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent);

*see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994)) (“In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.”).

You do not assert the request the county received is in fact a “subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure.” Furthermore, you have not demonstrated, and the request does not indicate, the information was otherwise requested pursuant to the authority of a statute or a rule of civil or criminal procedure. The requestor states he is requesting the information under the “Public Information Act.” Although discovery in a contested case is conducted under the Texas Rules of Civil Procedure, there is nothing preventing the requestor from also submitting a request for information under the Act. Therefore, we find the county received a request for information under the Act, and we will address whether the county is required to release the submitted information pursuant to the Act.

The requestor, in comments submitted to this office, contends the county failed to comply with section 552.301 of the Government Code for previous requests for the submitted information. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov’t Code § 552.301(b). 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) general 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 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 id.* § 552.301(e). You state the present request for information was received by the county on May 17, 2016. However, you acknowledge the requestor made previous requests for identical information beginning in January 2016. Upon review of the previous requests, we find the information responsive to the present request is also responsive to previous requests made by the requestor. You submitted the information required by sections 552.301(b) and 552.301(e) on June 1, 2016, and June 8, 2016, respectively. Thus, we find the county failed to comply with the procedural requirements of section 552.301.

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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of

law or affects third-party interests. *See* ORD 630. Although you raise section 552.103 of the Government Code as an exception to disclosure of the information at issue, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, the submitted information may not be withheld under section 552.103 of the Government Code. You also argue section 552.101 of the Government Code in conjunction with discovery privileges. Section 552.101 of the Government Code makes information confidential, and thus, can provide a compelling reason to withhold information. However, we note section 552.101 does not encompass discovery privileges. *See* Open Records Decision No. 647 at 2 (1996). You also raise rule 190.3 of the Texas Rules of Civil Procedure for the submitted information. Rule 190.3 merely provides for a discovery deadline and limitations on the use of oral depositions and interrogatories in certain civil cases and does not make information confidential for purposes of the Act. *See* Tex. R. Civ. P. 190.3; *see also* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Therefore, the county may not withhold any of the submitted information under rule 190.3. As you raise no further exceptions to 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](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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/akg

Ref: ID# 621648

Enc. Submitted documents

c: Requestor  
(w/o enclosures)