



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 4, 2015

Ms. Hadassah Schloss  
Director - Open Government  
Texas General Land Office  
P.O. Box 12873  
Austin, Texas 78711-2873

OR2015-25408

Dear Ms. Schloss:

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# 589603.

The Texas General Land Office (the "GLO") received a request for the attorney billings for the GLO's lawsuit against the City of Denton's ban on hydraulic fracturing. The GLO states it has released some of the requested information. The GLO claims some of the submitted information is excepted from disclosure under section 552.107 of the Government Code and privileged under Texas Rule of Evidence 503. Additionally, the GLO informs us the interests of third parties are involved. *See Gov't Code* § 552.304 (interested party may submit written comments regarding availability of requested information). We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See id.*

The GLO acknowledges, and we agree, it did not comply with the procedural requirements of section 552.301 of the Government Code. *See id.* § 552.301(b). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a governmental body demonstrates a compelling reason to withhold 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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The GLO raises section 552.107 of the Government Code and

Texas Rule of Evidence 503. This exception and this rule, however, are discretionary in nature. They serve to protect only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 11-12 (2002) (attorney-client privilege under section 552.107 and Texas Rule of Evidence 503 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). As such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. Thus, the GLO may not withhold the submitted information under section 552.107 of the Government Code or Texas Rule of Evidence 503. The GLO further claims third-party interests are at stake, which can provide a compelling reason to withhold information. However, we have not received comments from any third party explaining how release of the requested information would affect the third party's interests. Thus, we have no choice but to order the GLO 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](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# 589603

Enc. Submitted documents

c: Requestor  
(w/o enclosures)