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ATTORNEY GENERAL OF TEXAS

January 7, 2016

Ms. Jessica Holoubek
Counsel for the Memorial City Redevelopment Authority
Allen Boone Humphries Robinson LLP
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

OR2016-00520

Dear Ms. Holoubek:

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# 594261.

The Memorial City Redevelopment Authority (the "authority"), which you represent, received a request for documents relating to the location of property the authority is seeking to purchase for future public improvements.¹ We understand you to claim some of the submitted information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments slating why information should or should not be released).

We must address the authority's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. 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) 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

¹As you did not submit a copy of the request for information, we take our description of the request from the submitted brief.

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 authority received the request for information on October 12, 2015. Accordingly, its fifteen-business-day deadline was November 2, 2015. However, as of the date of this letter, the authority has not submitted for our review a copy of the written request for information. Further, the authority submitted the remaining information required under section 552.301(e) in an envelope bearing a shipment date of November 6, 2015. *See id.* § 552.308(a)(1) (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 authority failed to comply with section 552.301 of the Government Code.

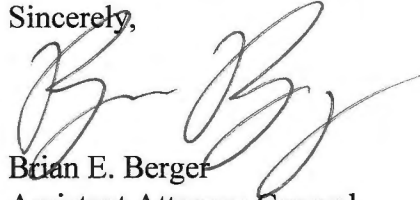
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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.*, 191 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). Although you claim section 552.105 of the Government Code for the submitted information, section 552.105 is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as a result, section 552.105 does not constitute a compelling reason to withhold information. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (waiver of discretionary exceptions), 564 (1990) (statutory predecessor to section 552.105 protects governmental body's interest and is subject to waiver). Accordingly, the authority may not withhold any portion of the submitted information under section 552.105. 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, 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 "Brian E. Berger". The signature is fluid and cursive, with the first name "Brian" and last name "Berger" clearly distinguishable.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 594261

Enc. Submitted documents

c: Requestor
(w/o enclosures)