



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 13, 2016

Ms. Sarah Parker  
Associate General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR2016-23017

Dear Ms. Parker:

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# 636614.

The Texas Department of Transportation (the "department") received a request for milling and repavement projects on State Highway 285. You claim the submitted information is excepted from disclosure under section 552.111. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you acknowledge, and we agree, the department failed to request a ruling or submit the responsive information within the statutory time periods prescribed by section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (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 requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166

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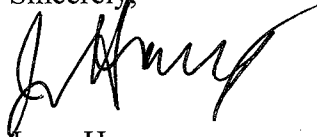
<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Although you assert the information at issue is excepted from release under section 552.111 of the Government Code, this section is discretionary in nature and serves only to protect a governmental body's interests. As such, the department's claim under this section is not a compelling reason to overcome the presumption of openness. *See* ORD 677 at 10 (section 552.111 is not compelling reason to withhold information under section 552.302); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Because you failed to comply with section 552.301, you have waived your claim under section 552.111 of the Government Code. As you raise no other arguments against 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,



Jesse Harvey  
Assistant Attorney General  
Open Records Division

JH/bw

Ref: ID# 636614

Enc. Submitted documents

c: Requestor  
(w/o enclosures)