



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 9, 2016

Mr. Mark Wolfe  
Executive Director  
Texas Historical Commission  
P.O. Box 12276  
Austin, Texas 78711

OR2016-25036

Dear Mr. Wolfe:

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# 633731.

The Texas Historical Commission (the "commission") received a request for all correspondence related to the Lions Municipal Golf Course and the associated National Register nomination. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the commission's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. 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 id.* § 552.301(b). The commission received the request for information on August 19, 2016. This office does not count the date the request was received or holidays as business days for the purpose of calculating a government body's deadline under the Act. Accordingly, you were required to provide the information required by section 552.301(b) by September 2, 2016. This office received the commission's request for a ruling on September 7, 2016. The envelope in which you submitted the request for a ruling under section 552.301 does not bear a post meter mark, nor have you provided sufficient evidence to establish the request for a ruling was deposited in the interagency mail by September 2, 2016. *See id.* § 552.308(a), (b) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the commission failed

to comply with the procedural requirements mandated by 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 procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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 that the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. Although you raise section 552.107 of the Government Code, 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 compelling reasons to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 676 at 12 (claim of attorney-client privilege under section 552.107 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 665 at 2 n.5 (2000) (discretionary exceptions in general). In failing to comply with section 552.301(b), the commission has waived its claim under section 552.107 of the Government Code. Therefore, none of the submitted information may be withheld under section 552.107 of the Government Code. As no further exceptions to disclosure have been raised, 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# 633731

Enc. Submitted documents

c: Requestor  
(w/o enclosures)