



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 5, 2017

Mr. James P. Allison  
Counsel for the Victoria County Groundwater Conservation District  
Allison, Bass & Magee, L.L.P.  
402 West 12th Street  
Austin, Texas 78701

OR2017-22734

Dear Mr. Allison:

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# 679303.

The Victoria County Groundwater Conservation District (the "district"), which you represent received a request for a specified study pertaining to a specified area. You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code.<sup>1</sup> In addition, you state its release may implicate the proprietary interests of Invista or C2HM Hill. Accordingly, you state, and provide documentation showing, you notified these third parties of the request and their rights to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

Initially, we must address the district'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.

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.104 of the Government Code, we note section 552.101 does not encompass other exceptions in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

Section 552.301(b) requires that a governmental body ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). While you raised sections 552.101 and 552.110 within the ten-business-day time period as required by section 552.301(b), the district did not raise section 552.104 until after the ten-business-day deadline had passed. Thus, the district failed to comply with the requirements mandated by subsection 552.301(b).

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.*, 797 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). By failing to timely raise section 552.104, we find the district failed to establish a compelling reason to address its claim under this section. However, we will consider the applicability of your timely raised exceptions.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from either third party. Thus, we have no basis to conclude either third party has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); *Open Records Decision Nos. 661 at 5-6 (1999)* (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the district may not withhold any of the submitted information on the basis of any proprietary interest either third party may have in the information.

The district asserts section 552.101 of the Government Code for the submitted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is considered to be confidential under other law. *See* *Open Records Decision Nos. 600 at 4 (1992)* (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). However, the district has failed to direct our attention to any law, nor are we aware of any law, under which any of the submitted information is considered to be confidential for purposes of section 552.101. Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code.

Although the district argues that the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. Thus, we do not address the district's argument under section 552.110. As no other exceptions were 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,



Patrick P. Mehaffy  
Attorney  
Open Records Division

PPM/eb

Ref: ID# 679303

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)