



TEXAS MUNICIPAL LAW BULLETIN™

A Supplemental News Bulletin Published by the Bojorquez Law Firm, PC ★ February 2017

Texas Supreme Court: Attorney-Client Privilege Prevails Over PIA Deadline

Last week, the Texas Supreme Court held that the Texas Public Information Act does not require confidential attorney-client communications to be released to the public even if the governmental body's request for permission to withhold is untimely. *Ken Paxton, Attorney General of Texas v. City of Dallas*, No. 15-0073 (Tex. Feb. 3, 2017).

Generally, to withhold information from public disclosure the Act requires the entity to request permission from the Attorney General's office within 10 business days. Failure to meet this deadline results in a presumption that the information must be released "unless there is a compelling reason to withhold the information." Tex. Gov't Code § 552.302.

Recently, the City of Dallas sought to withhold attorney-client communications. The City requested permission from the AG, but did so after the deadline. Consequently, the AG ruled that the City waived the attorney-client exception and the information must be released. The AG did not consider the information's classification as privileged attorney-client communications to be a compelling reason to withhold. The Supreme Court disagreed.

The Court details the important public interest served by ensuring public officials' access to

candid legal advice, goes on to acknowledge the importance of the Act's deadlines, but concludes that requiring "public disclosure of confidential attorney-client communications as an automatic—and irremediable—sanction for missing a statutory deadline is not necessary to achieve the PIA's objective of an open government."

With refreshing candor, the Court explains how the "compelling reason" standard was intended to serve as a safeguard against the Act's strict deadlines:

"Robotic perfection by a governmental body's public information officer is a statutory ideal, not an absolute requirement. To err is human, but to conduct a City's legal affairs without the occasional error would require divinity. The safeguard the Legislature enacted in section 552.302 exists to prevent such a scenario."

Accordingly, it was held that a document's classification as privileged attorney-client communication is itself a compelling reason to withhold information. Thus, the privilege can be a basis to overcome the presumption of openness that arises when a PIA filing deadline is missed.

BOJORQUEZ
LAW FIRM, PC
TexasMunicipalLawyers.com

This educational message was sent to clients, friends and colleagues of the Firm. If you do not wish to receive such email messages in the future, please reply to the sender, or e-mail your request to be removed from this mailing list to Info@TexasMunicipalLawyers.com. This document does not constitute legal advice.

12325 Hymeadow Dr., Ste 2-100, Austin, Texas 78750 ★ Phone: 512-250-0411 ★ Fax: 512-250-0749 ★ TexasMunicipalLawyers.com