



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 26, 2016

Mr. Javier Saenz
Assistant County Attorney
University Medical Center of El Paso
4815 Alameda Avenue, 8th Floor, Suite B
El Paso, Texas 79905

OR2016-01885

Dear Mr. Saenz:

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# 595439 (Ref. No. HM-15-073).

The University Medical Center of El Paso (the "center") received a request for multiple categories of information from a specific date range pertaining to the employment of a named individual.¹ The center claims the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception the center claims and reviewed the submitted information.

Initially, we must address the procedural obligations of the center under section 552.301 of the Government Code when requesting a decision from this office under the Act. 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* Gov't Code § 552.301(b). The center states it received the present request for information October 9, 2015. The center states it received clarification from the requestor on October 20, 2015. Accordingly, October 20, 2015 is the date the center is deemed to have received the request for information. Accordingly, the ten-business-day deadline was

¹The center states it sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

November 3, 2015. However, the center requested a ruling from our office in an envelope meter-marked November 4, 2015. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the center failed to comply with section 552.301(b) 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 the center raises section 552.107 of the Government Code, this exception is discretionary in nature. This section serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Open Records Decision Nos. 676 at 6 (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the center has waived its claim under section 552.107 for the information at issue. Accordingly, the submitted information may not be withheld under section 552.107 of the Government Code. As the center raises no further exceptions against disclosure of the submitted information, it 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 595439

Enc. Submitted documents

c: Requestor
(w/o enclosures)