



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 14, 2016

Ms. Mehran Jadidi
Assistant City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553

OR2016-27673

Dear Ms. Jadidi:

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# 637641 (W002607-091216).

The City of Galveston (the "city") received a request for a draft of a specified ordinance and any correspondence between specified individuals pertaining to a specified project.¹ You state the city has no information responsive to a portion of this request.² You state the city will release some of the requested information. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify 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 over-broad 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).

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, the requestor asserts and you acknowledge, the city did not comply with the procedural requirements of the Act. The requestor asserts she was not timely notified of the city's request for a ruling and other correspondence to this office as required by section 552.301 of the Government Code. Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). We note the city received the request for information on September 12, 2016. The city sought clarification of the request and received clarification from the requestor on September 20, 2016. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We understand the city provided the requestor with a cost estimate pursuant to section 552.2615 of the Government Code. However, we note section 552.2615 provides the submission of an estimate of charges to the requestor does not affect the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See Gov't Code* § 552.2615(g) (providing "[t]he time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G"). Therefore, the city's ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was October 4, 2016. The requestor states and you acknowledge, the city provided the information required by section 552.301(d) on October 6, 2016. Accordingly, we conclude the city 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 provide the requestor with information required in section 552.301 results in the legal presumption 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 Gov't Code* § 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 (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 the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Although you raise section 552.107 as an exception to disclosure, this section is a discretionary exception that protect a governmental body's interests and may be waived. Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) and rule 503 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.107 does not constitute a compelling reason to withhold information for purposes of section 552.302, and the city may not withhold the responsive information under section 552.107. However, because section 552.137 of the

Government Code makes information confidential, it can provide a compelling reason to withhold information, and we will consider the applicability of this section to the submitted information.³

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. To the extent the e-mail addresses at issue are not of a type specifically excluded by section 552.137(c), the city must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. However, to the extent the e-mail addresses at issue are excluded by section 552.137(c), or the owners affirmatively consent to their release, the city may not withhold the e-mail addresses at issue under section 552.137 of the Government Code. The city must release the remaining information.

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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/akg

³This office will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 637641

Enc. Submitted documents

c: Requestor
(w/o enclosures)