



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 15, 2017

Ms. Lola Dada-Olley
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2017-05399

Dear Ms. Dada-Olley:

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# 647526 (Plano File Nos. 16-048, 16-050, and 16-051).

The City of Plano (the "city") received a request for e-mails referencing the requestor sent by or to a named individual during a specified time period referencing the requestor.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim.

Initially, we note the city seeks to withdraw its request for an open records decision because it asserts the request for information was withdrawn by operation of law when the requestor failed to timely respond to a cost estimate for providing the requested records. Section 552.2615(a) of the Government Code provides if a request for a copy of public information or a request to inspect a paper record will result in the imposition of a charge that exceeds \$40, the governmental body shall provide the requestor with an itemized statement that details all estimated charges. Gov't Code § 552.2615(a). Section 552.2615(b) states if the requestor does not respond in writing to an itemized statement as described in section 552.2615(a) within 10 business days after the date the statement is sent to the requestor, the request is considered to have been withdrawn. *Id.* § 552.2615(b). The cost estimate you provided to the requestor and submitted to this office reveals the total cost for

¹As you have not submitted a copy of the request for information, we take our description from your brief.

production of documents is \$35.50. Therefore, we find the cost estimate at issue was not one sent pursuant to section 552.2615(a). Accordingly, we conclude the request for information was not withdrawn by operation of law. *See id.* Therefore, we will consider the exceptions you claim for the requested information.

Next, we note some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2017-04255 (2017). In Open Records Letter No. 2017-04255 we concluded, the city (1) must withhold the information we marked and all identifiable public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; (2) must withhold the motor vehicle record information we marked under section 552.130 of the Government Code; and (3) must release the remaining information. We have no indication the law, facts, or circumstances on which Open Records Letter No. 2017-04255 was based have changed. Accordingly, to the extent the requested information is identical to the information previously ruled on by this office, we conclude the city must continue to rely on Open Records Letter No. 2017-04255 as a previous determination and withhold or release the information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will consider your arguments for the requested information that was not at issue in the previous ruling.

Next, we must address the city'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(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the city received the request for information on December 1, 2016. However, as of the date of this ruling, you have not provided written comments stating why the claimed exceptions apply, a copy of the written request for information, or a copy or representative sample of the requested information. Consequently, we find the city has failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301 results in the legal presumption that the 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 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). Although the city raises exceptions to disclosure, because you have not submitted a copy or representative sample of the specific information requested to this office for our review, we have no basis for finding it excepted from disclosure. Thus, we have no choice but to order the city to release the requested information in accordance with section 552.302 of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2017-04255, the city must rely on that ruling as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the remaining requested information was not previously ruled on, the city must release it pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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/sdk

Ref: ID# 647526

c: Requestor