



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 26, 2017

Ms. Shea Smith  
Assistant City Attorney  
City of Sugar Land  
P.O. Box 110  
Sugar Land, Texas 77487-0110

OR2017-14191

Dear Ms. Smith:

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# 663252 (City ORR# W001802).

The City of Sugar Land (the "city") received a request for all information related to a specified incident. You state you have released some information to the requestor. You claim the submitted information is not subject to disclosure.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, you state, while the city has the technological capability to produce a copy of the submitted video recordings, it lacks the capability to provide the video recordings to the requestor in a viewable or audible format without purchasing software or hardware to accommodate the request. Section 552.228(b) of the Government Code provides in relevant part:

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy in an electronic medium, such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

---

<sup>1</sup>Although you cite section 552.108 of the Government Code, you provide no arguments explaining how this exception is applicable to the submitted information. Therefore, we assume you no longer assert this exception. See Gov't Code §§ 552.301, .302.

...

(2) the governmental body is not required to purchase any software or hardware to accommodate the request[.]

Gov't Code § 552.228(b)(2). Section 552.228(b) applies when the requestor requests information be provided to him in a specified medium, such as diskette or magnetic tape. *See id.* In this instance, the requestor seeks information pertaining to a specified incident and does not specify the requested information be provided in a particular medium. Thus, we find section 552.228(b) is not applicable in this instance. You also assert the city cannot produce a "suitable copy" of the video recordings at issue pursuant to section 552.228 of the Government Code. Section 552.228(a) requires a governmental body to provide "a suitable copy" of public information within a reasonable time after the date on which the information is requested. *Id.* § 552.228(a). Further, section 552.221(a) provides "an officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer." *See id.* § 552.221(a); *Moore v. Collins*, 897 S.W.2d 496, 499 (Tex. App.—Houston [1st Dist.] 1995, no writ) (holding section 552.221 required governmental body to respond to request for information either by presenting requestor with the requested information for copying or by informing him it was in active use or storage); Open Records Decision Nos. 682 at 7 (2005) (section 552.221 requires governmental body to either provide information for inspection or duplication or send copies of information by first-class mail), 512 at 1 (1988) (predecessor provisions of the Act gives requestor option to take notes from original documents, pay for copies of public records, or both). The language of section 552.221 does not give the public information officer the discretion to choose whether to comply; upon request for the information, the officer must make the information available as required under section 552.221. *Moore*, 897 S.W.2d at 499. Thus, the city must comply with the Act in responding to the present request for information.

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. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving a request for information it seeks to withhold a copy of the specific information requested or representative samples of the information. *See* Gov't Code § 552.301(e)(1)(D). You have submitted the information on a disc in a format we are unable to view. Furthermore, you state you are unable to review any audio portions of the video recordings at issue, to the extent any audio exists. Although you inform us the city is unable to produce copies of the video recordings other than in the submitted disc format due to a "decommissioned server" or software incompatibility, we note the fifteen-business-day deadline to submit a copy of the information requested is statutorily imposed on the city by section 552.301(e), and this office is required to adhere to this provision when determining the timeliness of the submissions made by the department for purposes of requesting a ruling under the Act. *See id.* §§ 552.301, .302, .306. Additionally, we note a governmental body

may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). Therefore, we conclude the city failed to comply with the procedural requirements mandated by section 552.301(e) regarding the information at issue.

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 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 342,350 (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). Although you claim any audio recordings, to the extent they exist, may be confidential by law, because you have not submitted the remaining requested information for our review, we have no basis for finding it excepted from disclosure. As this office is required by section 552.306 of the Government Code to render a decision not later than the forty-fifth business day after the date this office received the city's request for a decision, we have no choice but to order the remaining requested information released pursuant to section 552.302. *See Gov't Code §§ 552.302, .306.* 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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

Ref: ID# 663252

Enc. Submitted documents

c: Requestor  
(w/o enclosures)