



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 6, 2019

Ms. Jennifer M. Avendaño  
Assistant City Attorney  
City of Brownsville  
1001 East Elizabeth Street, Suite 225  
Brownsville, Texas 78520

OR2019-06215

Dear Ms. Avendaño:

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# 753439 (Ref. Nos. 2018-716 & 2018-728).

The City of Brownsville (the "city") received two requests for information pertaining to the city's ambulance services, including a specified audit report. You claim the requested audit report is not subject to the Act. You also claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments.

Initially, you assert the requested audit report is not subject to the Act because the city's procedure for conducting the independent audit was not properly followed and, thus, the requested audit report is not "public information" for purposes of the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002(a) defines "public information" as the following:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002(a). Thus, virtually all information in a governmental body's physical possession constitutes public information subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Additionally, information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See* Gov't Code § 552.002(a-1).

You argue the requested audit report is not public information subject to the Act. You explain the city planned to conduct an independent audit of a specific investigation. You further explain the city's Audit and Oversight Committee (the "committee") would select the independent auditor through a formal approval process. You state "[t]here are no records indicating that the [city] or the [committee] ever formally approved the audit or the auditor." You inform us, on December 4, 2018, the Chairman of the committee attempted to introduce the requested audit report during a City Commission meeting, but "[t]he introduction and acceptance was rejected . . . because it was out of order and not part of a properly noticed and discussed agenda item." However, although you state proper city procedure was not followed in the creation of the audit, we note the requested audit pertains to the transaction of official city business and is maintained by the Chairman of the committee. Accordingly, the requested audit is subject to the Act, and must be released unless an exception to disclosure applies to the information. *See id.* §§ 552.301(a), .302.

Next, we must address the city's obligations under the Act. Section 552.301 of the Government Code 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(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 for information. *See id.* § 552.301(b). Further, 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).

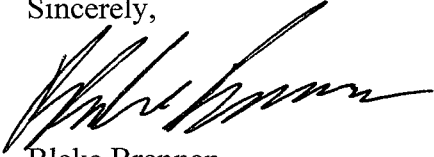
In this instance, the city received the first request for information on December 5, 2018. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the city's ten-business-day deadline with respect to the first request for information was December 19, 2018. However, the envelope in which the city provided the information required by section 552.301(b) was postmarked December 20, 2018. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Further, as of the date of this letter, you have not submitted a copy or representative sample of the information requested. Consequently, we find the city failed to comply with the requirements of section 552.301.

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, 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 the city raises section 552.101 of the Government Code for some of the requested information, because you have not submitted the information at issue for our review, we have no basis for finding any of the information excepted from disclosure. Thus, we have no choice but to order the requested information released pursuant to section 552.302. If you believe the information 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,

A handwritten signature in black ink, appearing to read 'Blake Brennan', written in a cursive style.

Blake Brennan  
Attorney  
Open Records Division

BB/eb

Ref: ID# 753439

c: 2 Requestors