



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 25, 2019

Ms. Jennah Espino
City Secretary
City of Little River-academy
P. O. Box 521
Little River-academy, Texas 76554

OR2019-10965

Dear Ms. Espino:

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# 761728.

The City of Little River-Academy (the "city") received a request for specified city information.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.152 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

First, we must address the obligations of the city under section 552.301 of the Government Code when requesting a decision from this office 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. *See id.* § 552.301(b). Pursuant to section 552.301(e), a

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

²Although you do not raise section 552.152 of the Government Code in your brief, we understand you to raise this exception based on your arguments. Additionally, although you also raise sections 552.021 and 552.352 of the Government Code, we note sections 552.021 and 552.352 are not exceptions to disclosure. Rather, section 552.021 provides that public information is available during normal business hours and section 552.352 is a procedural provision that sets forth criminal penalties for the distribution of confidential information. *See* Gov't Code §§ 552.021, .352.

governmental body is required to 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 on December 28, 2018. We understand the city was closed on January 1, 2019. 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, we find the city's ten-business-day deadline under section 552.301(b) was January 14, 2019, and the fifteen-business-day deadline under section 552.301(e) was January 22, 2019. However, the envelope in which the city provided the information required by section 552.301(b) was postmarked February 19, 2019 and the envelope in which the city provided the information required by section 552.301(e) was postmarked April 11, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, 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 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). The city claims sections 552.101, 552.108, and 552.152 of the Government Code for the submitted information. Because sections 552.101 and 552.152 can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these sections for the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception.

Next, we note the submitted information contains copies of city ordinances. As laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision Nos. 551 at 2-3 (1990) (laws or ordinances are open records), 221 at 1 (1979) (official records of governmental body's public proceedings are among most open of records). Therefore, the submitted ordinances must be released.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses information made confidential by judicial decision and the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers*,

L.L.C., 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm. *Id.* In applying this standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119. Upon review, we conclude you have failed to demonstrate the applicability of the common-law physical safety exception to any of the remaining information. Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

Section 552.152 of the Government Code provides:


Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov’t Code § 552.152. You generally raise section 552.152 of the Government Code. Upon review, we find you have failed to demonstrate the release of the submitted information would subject an employee or officer to a substantial risk of physical harm. Accordingly, the city may not withhold any of the submitted information under section 552.152 of the Government Code. The city must release the submitted 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/jxd

Ref: ID# 761728

Enc. Submitted documents

c: Requestor
(w/o enclosures)