



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 26, 2019

Ms. Rebecca Vela
Counsel for Edinburg Housing Authority
Rebecca Vela, PC
203 South 10th Street
Edinburg, Texas 78539

OR2019-11153

Dear Ms. Vela:

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# 760869.

The Edinburg Housing Authority (the "authority"), which you represent, received a request for three categories of information pertaining to a named employee. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, and 552.117 of the Government Code. We have considered the exceptions you claim.

Initially, we note some or all of the requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-09392 (2019). Accordingly, to the extent the law, facts, or circumstances on which the prior ruling was based has not changed, the authority must continue to rely on Open Records Letter No. 2019-09392 as a previous determination and withhold and release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (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). To the extent the requested information is not identical or the law, facts,

or circumstances on which the prior ruling was based has changed, we consider your claimed exceptions.

Next, we must address the authority's procedural 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 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). As of the date of this letter, the authority has not submitted for our review comments stating why the claimed exceptions apply, or a copy or representative sample of the requested information. Consequently, we conclude the authority has failed to comply with the procedural requirements mandated by section 552.301(e) 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, 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 authority raises exceptions to disclosure, because you have not submitted the requested information 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 of the Government Code.

In summary, to the extent the law, facts, or circumstances on which the prior ruling was based has not changed, the authority must continue to rely on Open Records Letter No. 2019-09392 as a previous determination and withhold and release the identical information in accordance with that ruling. To the extent the requested information is not identical or the law, facts, or circumstances on which the prior ruling was based has changed, the authority must release the requested information pursuant to section 552.302 of the Government Code. 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](#), 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 "Michelle Garza", with a long horizontal flourish extending to the right.

Michelle Garza
Assistant Attorney General
Open Records Division

MRG/mo

Ref: ID# 760869

c: Requestor