



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 21, 2019

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78207

OR2019-16964

Dear Mr. Kopp:

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# 771615 (Ref. No. W258505).

The City of San Antonio (the "city") received a request for information pertaining to a specified incident. You claim the requested information is excepted from disclosure under sections 552.101 through 552.156 of the Government Code. We have considered the exceptions you claim.

Initially, we note the requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2018-00001 (2018), this office ruled the city may withhold the information at issue under section 552.108(a)(1) of the Government Code on behalf of a law enforcement agency. Thus, to the extent the law, facts, or circumstances upon which the prior ruling was based have not changed and the requested information is identical to the information previously requested and ruled upon, the city may continue to rely on Open Records Letter No. 2018-00001 as a previous determination, and withhold the previously ruled upon information in accordance with it. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information in the current request is

not identical or the laws, facts, or circumstances on which this prior ruling was based have changed, we will consider the exceptions you raise.

We must address the city's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that 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. *Id.* § 552.301(e). In this instance, you state the city received the request for information on April 1, 2019. As of the date of this letter, you have not submitted for our review written comments stating the reasons why the claimed exceptions apply or a copy or representative sample of the information requested. Consequently, we find the city failed to comply with the requirements of 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, 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 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. 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.

In summary, to the extent the law, facts, or circumstances upon which the prior ruling was based have not changed and the requested information is identical to the information previously requested and ruled upon, the city may continue to rely on Open Records Letter No. 2018-00001 as a previous determination, and withhold the previously ruled upon information in accordance with it. To the extent the information in the current request is not identical or the laws, facts, or circumstances on which Open Records Letter No. 2018-00001 was based have changed, the city must release the requested information pursuant to section 552.302 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 'Meredith L. Coffman', with a long, sweeping flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/mo

Ref: ID# 771615

c: Requestor