



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2020

Mr. Floyd Akers
Counsel for the City of Hearne
Law Office of Floyd Akers
P.O. Box 1179
San Marcos, Texas 78667-1179

OR2020-02033

Dear Mr. Akers:

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# 807716.

The City of Hearne (the "city"), which you represent, received a request for all information pertaining to the arrest of a named individual on a specified date, including personnel information regarding certain city police officers.¹ You state the city will release some information. You claim some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception.

We must address the city'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*

¹ As the city has not submitted a copy of the request for information for our review, we take our description from its brief to our office.

id. § 552.301(e). You state the city received the request on November 4, 2019. However, as of the date of this letter, the city has not submitted for our review a copy of the written request for information or a copy or representative sample of the requested information. Consequently, we conclude the city 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 city raises an exception 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.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/be

Ref: ID# 807716

c: Requestor