



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 28, 2020

Ms. Nneka E. Kanu
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2020-02592

Dear Ms. Kanu:

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# 808557 (GC No.26309).

The City of Houston (the "city") received a request for information related to the city's social services and information on damage caused by a specified storm. Although the city takes no position as to whether the requested information is excepted under the Act, the city states release of the requested information may implicate the proprietary interests of a certain third party. Accordingly, the city states it notified the third party of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).

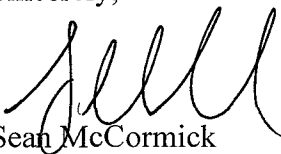
We must address the obligations of the city under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow 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. Gov't Code § 552.301 (e). The city received the clarified request for information on November 14, 2019. However, we note the city has submitted the requested information in a format we are unable to view. The city must submit information in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. As this office cannot review the submitted information, we conclude the city failed to comply with the requirements of section 552.301 of the Government Code with respect to the submitted information. *See* Gov't Code § 552.301(e)(1)(D).

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). Third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code § 552.302; Open Records Decision No. 150 (1977) (construing predecessor statute). We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As the city has not submitted the requested information in a format this office is able to view, and the interested third party has not submitted arguments objecting to disclosure of the requested information, 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.

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,



Sean McCormick
Attorney
Open Records Division

SMC/eb

Ref: ID# 808557

Enc. Submitted documents

c: Requestor
(w/o enclosures)