



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 13, 2020

Ms. Deborah Lynne Klein
Deputy City Attorney
City of San Antonio
100 West Houston Street, 18th Floor
San Antonio, Texas 78205

OR2020-07991

Dear Ms. Klein:

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# 816923 (COSA File No. W294969-120319).

The City of San Antonio (the "city") received a request for information related to a specified arbitration proceeding, including specified reports and all exhibits used during the proceeding. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the city's 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(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). In this instance, the city received the request for information on December 3, 2019. Thus, the city's ten-business-day deadline was December 17, 2019. However, the envelope in which the city provided the information required by section 552.301(b) was postmarked January 2, 2020. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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(b) 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). You claim sections 552.103 and 552.107 of the Government Code for the submitted information. Because section 552.107 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this exception against release of the submitted information. However, we find you failed to establish a compelling reason to address the remaining claimed exception.

Next, we note a portion of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information contains completed reports that are subject to section 552.022(a)(1). You seek to withhold the information at issue under section 552.107(2) of the Government Code. Section 552.107(2) allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). However, section 552.022(b) provides that a court may not order a governmental body to withhold from public inspection any category of information described by section (a) unless the category of information is expressly made confidential under the Act or other law. *See id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, we conclude the city may not withhold the information subject to section 552.022(a)(1) of the Government Code under section 552.107(2) of the Government Code. However, we will address your argument under section 552.107(2) of the Government Code for the remaining information.

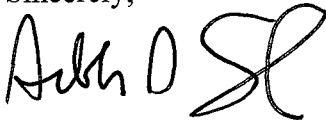
Section 552.107(2) of the Government Code provides information is excepted from disclosure if "a court by order has prohibited disclosure of the information." *Id.* § 552.107(2). You have submitted a copy of an arbitration transcript recording an arbitrator's request that no reports or exhibits from the specified arbitration proceeding be disclosed. However, this request does not prohibit the city from releasing any of the information at issue to the requestor pursuant to the Act. Thus, we conclude the city has

not established a court has prohibited disclosure of any of the remaining information to the requestor. Therefore, the city may not withhold any of the remaining information from the requestor under section 552.107(2) of the Government Code. As no further exceptions to disclosure have been raised, 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 <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,

A handwritten signature in black ink, appearing to read 'Deborah Southerland', written in a cursive style.

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/rm

Ref: ID# 816923

Enc. Submitted documents

c: Requestor
(w/o enclosures)