



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 13, 2020

Ms. Lori J. Robinson  
Counsel for the City of Lakeway  
Bickerstaff Heath Delgado Acosta LLP  
3711 South MoPac Expressway, Building One, Suite 300  
Austin, Texas 78746

OR2020-08051

Dear Ms. Robinson:

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# 81641.

The City of Lakeway (the "city"), which you represent, received two requests from the same requestor for information pertaining to four named individuals. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. Additionally, you state, and provide documentation showing, the city notified the Nashua, New Hampshire Police Department (the "department") of the right to submit comments to this office why the requested information should not be released.<sup>1</sup> See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you raise.

Initially, we note some 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. 2020-04984 (2020). We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent some of the requested information is identical to the information previously requested and ruled upon by this office, the city may rely on Open Records Letter No. 2020-04984 as a previous determination and withhold or release the identical information in accordance with that ruling. 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

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<sup>1</sup> As of the date of this letter, this office has not received comments from the department explaining why any of the requested information should not be released.

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 that information is or is not excepted from disclosure).

Next, 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. Pursuant to subsection 552.301(e), a governmental body must 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* Gov't Code § 552.301(e). The city received the requests for information on December 17, 2019 and December 18, 2019. Further, you provide documentation showing the city sought and received clarification of the requests on December 18, 2019. *See id.* § 552.222(b). You state the city was closed for business December 24, 2019, December 25, 2019, and January 1, 2020. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, you were required to provide the information required by subsection 552.301(e) by January 13, 2020. As of the date of this letter, you have not submitted for our review comments stating the reasons why the claimed exceptions applies 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 in requesting this decision from our office.

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.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter No. 2020-024984 as a previous determination and withhold or release the identical information at issue in accordance with that ruling. To the extent the requested information was not previously ruled on, the city must release it 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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/be

Ref: ID# 816461

c: Requestor

Third Party