



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2020

Mr. Patrick Vollmer
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2020-18631

Dear Mr. Vollmer:

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# 836959 (OGC# RM0021).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the implementation of a specified department policy. You state you are withholding certain information pursuant to Open Records Decision No. 684 (2009) and access device numbers pursuant to section 552.136(c) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

We must address the requestor's assertion the department failed to comply with section 552.301 of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See id.* § 552.301(a). Section 552.301(e)(1)(A) requires the governmental body to submit to this office within fifteen business days of receiving an open

¹ Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision. Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

records request “written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld[.]” *Id.* § 552.301(e)(1)(A). Section 552.301(e-1) provides as follows:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

Id. § 552.301(e-1). You state, and provide documentation demonstrating, the department received the clarified request for information on May 6, 2020. You state the department was closed on May 25, 2020. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body’s deadlines under the Act. You do not state the department was closed for any additional business days between May 6, 2020, and May 28, 2020. Accordingly, the department was required to provide the information required by sections 552.301(e) and 552.301(e-1) by May 28, 2020. The information containing the information required by section 552.301(e) was submitted to this office via interagency mail on May 28, 2020. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). However, the requestor states, and provides documentation demonstrating, the envelope in which the department mailed its correspondence to the requestor pursuant to section 552.301(e-1) of the Government Code is postmarked June 1, 2020. *See id.* Accordingly, we conclude the department failed to comply with the procedural requirements of section 552.301(e-1) 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 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The department claims sections 552.108 and 552.111 of the Government Code for the submitted information. However, we find you have failed to establish a compelling reason to address your claimed exceptions. Accordingly, the department 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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/jm

Ref: ID# 836959

Enc. Submitted documents

c: Requestor
(w/o enclosures)