



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 28, 2020

Ms. Roxy Perez Stevens  
Counsel for the City of Kyle  
The Knight Law Firm  
223 West Anderson Lane, Suite A-105  
Austin, Texas 78752

OR2020-21667

Dear Ms. Stevens:

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# 842324.

The City of Kyle (the "city"), which you represent, received a request for all investigations pertaining to a named individual and/or the requestor during a certain time period. You claim the requested information is excepted from disclosure under sections 552.101 through 552.160 of the Government Code. We have considered the exceptions you claim.

Initially, we note some of the requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2016-19917 (2016), this office ruled the city may withhold certain information under section 552.103 of the Government Code and certain information under section 552.107(1) of the Government Code. We have no indication the law, facts, or circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the city may continue to rely on Open Records Letter No. 2016-19917 as a previous determination and withhold or release the previously ruled upon 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 determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the information

in the current request is not encompassed by the prior ruling, we will consider the exceptions you raise.

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). As of the date of this letter, you have not submitted for our review comments stating the reasons why the claimed exceptions apply 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 exceptions 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. If you believe the information may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the city may continue to rely on Open Records Letter No. 2016-19917 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. The city must release the remaining requested 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,

Emily Kunst  
Assistant Attorney General  
Open Records Division

EK/jm

Ref: ID# 842324

Enc. Submitted documents

c: Requestor  
(w/o enclosures)