



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2022

Ms. Evette P. Ugues
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2022-03129

Dear Ms. Ugues:

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# 927688 (Ref. No. OP-21-1405).

The El Paso County Auditor's Office (the "county") received a request for a specified memorandum and communications regarding the same memorandum. You claim the submitted information is excepted from disclosure under section 552.116 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the county'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(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* Gov't Code § 552.301(b). Further, 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 id.* § 552.301(e). The county received the request for information on November 9, 2021. We note the county was closed on November 11, 2021, November 25, 2021, and November 26, 2021. 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. Accordingly, you were required to provide the information required by subsection 552.301(b) by November 24, 2021. Additionally, you were required to provide the information required by subsection 552.301(e) by December 3, 2021. However, you did not submit the information required by subsection 552.301(b) and 552.301(e) until December 9, 2021. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the county 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 (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 county claims section 552.116 of the Government Code for the submitted information. However, we find you have failed to establish a compelling reason to address your claimed exception. Accordingly, the county 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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/jxd

Ref: ID# 927688

c: Requestor