



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 17, 2022

Mr. William E. Conrad
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2022-04901

Dear Mr. Conrad:

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# 931403 (ORR# LGL 21-152).

The City of Waco (the "city") received a request for seven categories of correspondence involving the requestor and other named individuals. You state you have released some information. You claim portions of the submitted information are excepted from disclosure under sections 552.110, 552.111, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note portions of the submitted information are not "public information" subject to disclosure under the Act. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;

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.

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We note some of the submitted information consists of information used solely for the purpose of maintenance, manipulation, or protection of public property and has no other significance. Upon review, we conclude the password information we have indicated is not "public information" for purposes of the Act, and the city is not required to release it in response to this request.²

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 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. *Id.* § 552.301(b). Pursuant to section 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). You state, and the submitted documentation demonstrates, the city received the present request for information on November 10, 2021. You state the city was closed for business on November 11, 25, 26, and 30, as well as December 1, 2021. Accordingly, the city was required to provide the information required by subsections 552.301(b) and 552.301(e) by November 29, 2021, and December 8, 2021, respectively. You state the city sought clarification of the request on December 9, 2021, and received clarification from the requestor on December 13, 2021. However, because the city did not request clarification until after the ten-business-day deadline had passed, the statutory deadlines under section 552.301 were not reset by the request for clarification and must be measured from the date the city received the request for information. *See generally City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (after requesting clarification within ten-business-day deadline, governmental body timely submitted request for opinion within ten

² As we are able to make this determination, we need not address your argument against disclosure of this information.

business days after receiving clarification). Thus, the city was required to provide the information required by subsection 552.301(b) by November 29, 2021, and the information required by subsection 552.301(e) by December 8, 2021. However, the envelope in which the city provided the information required by section 552.301(b) was postmarked December 2, 2021. *See* Gov't Code § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Additionally, the envelope in which the city provided the information required by section 552.301(e) was postmarked December 29, 2021. *See id.* Consequently, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 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 city claims sections 552.110, 552.111, and 552.136 of the Government Code for the submitted information. However, because section 552.110 protects the interests of third parties that provide the information, not a governmental body's interest, we do not address your section 552.110 assertion. *See* Gov't Code § 552.110 (section excepts from disclosure trade secrets and commercial or financial information obtained from person). Because section 552.136 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Accordingly, the city must withhold the bank account number we have marked within the remaining information under section 552.136 of the Government Code. However, upon review, we find you have failed to demonstrate any of the remaining information at issue consists of access device numbers for purposes of section 552.136. Accordingly, the city may not withhold any portion of the remaining information at issue under section 552.136 of the Government Code.

In summary, the password information we have indicated is not “public information” for purposes of the Act, and the city is not required to release it in response to this request. The city must withhold the bank account number we have marked within the remaining information under section 552.136 of the Government Code. The remaining information must be released.

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,

Colin Henry
Attorney
Open Records Division

CEH/be

Ref: ID# 931403

Enc. Submitted documents

c: Requestor
(w/o enclosures)