



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 23, 2022

Ms. Savita Rai
Assistant City Attorney
City of San Antonio
401 South Frio, Suite 204
San Antonio, Texas 78207

OR2022-05470

Dear Ms. Rai:

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# 929184 (COSA File Nos. W413752 & W413753).

The City of San Antonio (the "city") received two requests from the same requestor for information pertaining to two specified properties. The city claims the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception the city claims and reviewed the submitted representative sample of information.¹ 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 city 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 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:

¹ We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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). The city states it received the requests for information on November 9, 2021. The city informs us it was closed for city holidays on November 11, 2021, and November 25-26, 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, the city was required to provide the information required by sections 552.301(e) and 552.301(e-1) by December 3, 2021. The information required by section 552.301(e) was submitted to this office via first-class mail on December 3, 2021. *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 information required to be sent to the requestor pursuant to section 552.301(e-1) of the Government Code was not e-mailed to her until January 19, 2021. Additionally, the requestor provides documentation showing the city acknowledged it could not locate any record demonstrating the information required to be sent to the requestor pursuant to section 552.301(e-1) was timely sent. Accordingly, we conclude the city 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 city claims section 552.103 of the Government Code for the submitted information. However, we find the city has failed to establish a compelling reason to address its claimed exception. Accordingly, the city must release the submitted information.²

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.

² We note the requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the city receives another request for the same information from a different requestor, the city must again seek a decision from this office.

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,

Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/jxd

Ref: ID# 929184

Enc. Submitted documents

c: Requestor
(w/o enclosures)