



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2022

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

OR2022-08384

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# 938909 (ORR# W420873).

The City of San Antonio (the "city") received a request for e-mails sent or received by a named city employee during a specified time period. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Initially, 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. *See* Gov't Code § 552.301. 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. *See id.* § 552.301(b). The city received the request for information on December 22, 2021. The city informs us it was closed between December 24, 2021, and January 2, 2022. The city does not inform us it was closed for any additional business days between December 22, 2021, and January 13, 2022. Accordingly, the city was required to provide the information required by section 552.301(b) by January 13, 2022. However, the envelope in which the city provided the information required by section 552.301(b) was postmarked January 21, 2022. *See id.* § 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). Accordingly, 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). Although the city claims section 552.101 of the Government Code in conjunction with the common-law informer's privilege for portions of the submitted information, we find the city has failed to establish a compelling reason to address this provision. However, section 552.137 of the Government Code can provide a compelling reason to overcome the presumption of openness.¹ Therefore, we will address the applicability of this exception to the submitted information.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the city must withhold the personal e-mail address within the submitted information under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The city must release the remaining information pursuant to section 552.302 of the Government Code.

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,

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/be

¹ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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Enc. Submitted documents

c: Requestor
(w/o enclosures)