



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 23, 2022

Mr. Donald C. Davie
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2022-18029

Dear Mr. Davie:

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# 955856 (Ref. Nos. 22-1020-1345 and 22-1020-1346).

The City of El Paso (the "city") received two requests from the same requestor for certain information pertaining to a specified type of city fee during a stated period of time. You state the city has released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the present request for information because it does not pertain to the time period specified in the present request. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to the present request.¹

Next, we note the responsive information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

¹ As we are able to make this determination, we need not address your arguments against disclosure of this information.

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The responsive information consists of information in an account, contract, or voucher relating to the receipt or expenditure of funds by the city that is subject to section 552.022(a)(3). This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information subject to section 552.022(a)(3) under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the city may not withhold any portion of the responsive information under section 552.103 of the Government Code. However, because section 552.101 of the Government Code makes information confidential under the Act, we will consider your argument under this section for the information at issue.

You generally assert the responsive information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This section encompasses information that is considered to be confidential under other constitutional, statutory, or decisional law. However, you have not directed our attention to, and we are not aware of, any law under which any of the information at issue is considered to be confidential for the purposes of section 552.101. *See* Open Records Decision Nos. 611 at 1 (1992) (common-law privacy), 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality). Therefore, we conclude the city may not withhold any portion of the responsive information under section 552.101 of the Government Code. The city must release the responsive 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/jm

Ref: ID# 955856

Enc. Submitted documents

c: Requestor
(w/o enclosures)