



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2022

Mr. Kyle L. Dickson
City Attorney
City of Texas City
P.O. Drawer 2608
Texas City, Texas 77592-2608

OR2022-34176

Dear Mr. Dickson:

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# 982659 (ORR# 2022-1225).

The City of Texas City (the "city") received a request for two specified e-mails and body-camera recording footage of a named officer on a specified date. The city represents it will withhold one of the requested e-mails in accordance with Open Records Letter No. 2022-35503 (2022). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). The city claims the remaining requested information is excepted from disclosure under sections 552.108 and 552.152 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

We must address the procedural obligations of the city under section 552.301 of the Government Code regarding the requested recording. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e)(1)(D), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(D). The city received the request for information on August 11, 2022. However, as of the date of this letter, the city has not submitted a copy or representative sample of the requested recording. Therefore, the city failed to comply with the procedural requirements mandated by section 552.301(e) regarding the recording.

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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Although the city raises an exception to disclosure of the recording, because the city has not submitted the requested recording for our review, we have no basis for finding any this information excepted from disclosure. Thus, we have no choice but to order the requested recording be released pursuant to section 552.302. If the city believes this information may not lawfully be released, it must challenge this ruling in court pursuant to section 552.324 of the Government Code.

Section 552.152 of the Government Code provides the following:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. Upon review, we find the city has failed to demonstrate release of any of the information in Exhibit 4 would subject an employee or officer of the city to a substantial threat of physical harm. Therefore, the city may not withhold any of this information under section 552.152 of the Government Code. Accordingly, the city must release this information to the requestor.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

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Enc. Submitted documents

c: Requestor
(w/o enclosures)