



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 6, 2015

Mr. L. Brian Narvaez  
Counsel for the City of Eagle Pass  
Langley & Banack Incorporated  
401 Quarry Street  
Eagle Pass, Texas 78852

OR2015-04383

Dear Mr. Narvaez:

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# 555416.

The City of Eagle Pass (the "city"), which you represent, received a request for the requestor's complete personnel file, including all disciplinary records. You state the city will provide some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

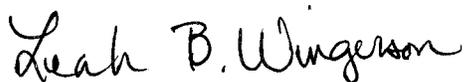
We must address the city's procedural obligations under the Act. Section 552.301(e-1) of the Government Code requires a governmental body that submits written comments requesting a ruling to the attorney general under section 552.301(e)(1)(A), to send a copy of those comments to the person who requested the information from the governmental body not later than the fifteenth business day after the date of receiving the written request. Gov't Code § 552.301(e-1). Section 552.301(e-1) authorizes the governmental body to redact information from those written comments that discloses or contains the substance of the information requested. *Id.* We note the city redacted virtually the entirety of its argument in support of its raised exception in the copy of the comments sent to the requestor. We further note the redacted portions of the city's comments neither disclose nor contain the substance of the submitted information. Consequently, we find the city failed to comply with the 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 section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. The city claims section 552.103 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Gov't Code § 552.007; *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 section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.103 of the Government Code. As you have not claimed any other exceptions to disclosure, the city must release the submitted 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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/bhf

Ref: ID# 555416

Enc. Submitted documents

c: Requestor  
(w/o enclosures)