



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 12, 2015

Mr. James Kopp
Assistant City Attorney
City of San Antonio
Office of the City Attorney
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2015-04750

Dear Mr. Kopp:

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# 559014 (City File No. W055366).

The City of San Antonio (the "city") received a request for information pertaining to "lodging houses" that have been cited since December 1, 2011. The city claims the requested information is excepted from disclosure under sections 552.101 through 153 of the Government Code. We have considered the claimed exceptions.

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code, which 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(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. Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). The city received the request for information on January 12, 2015, and informs us it was closed on January 19, 2015. Thus, its ten-business-day deadline under

section 552.301(b) was January 27, 2015, and its fifteen-business-day deadline under section 552.301(e) was February 3, 2015. However, the city did not request a ruling from this office until January 30, 2015, and, as of the date of this letter, the city has not submitted written comments regarding the stated exceptions or a copy or representative sample of the requested information. Therefore, the city failed to comply with the procedural requirements mandated by section 552.301.

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 the governmental body demonstrates 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); *see also* Open Records Decision No. 630 (1994). By failing to comply with section 552.301, the city has waived the discretionary exceptions raised. *See* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Furthermore, because the city has not submitted the information to this office for our review, we have no basis for finding it confidential under the claimed mandatory exceptions. Therefore, we have no choice but to order the city to release the responsive information in accordance with section 552.302 of the Government Code. If the city believes the information is confidential and may not lawfully be released, the city must challenge this ruling in court pursuant to section 552.324 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 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 559014

c: Requestor
(w/o enclosures)