



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 15, 2015

Ms. Jessica D. Richard
Assistant City Attorney
City of New Braunfels
Office of the City Attorney
424 South Castell Avenue
New Braunfels, Texas 78130

OR2015-14424

Dear Ms. Richard:

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# 571676 (New Braunfels CSO No. 2015-137).

The City of New Braunfels (the "city") received a request for nine categories of information pertaining to a named former employee.¹ You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.105 and 552.107 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹You note the city received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Although the city raises section 552.101 of the Government Code in conjunction with sections 552.107 and 552.131 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Although you raise section 552.131 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we must address the city's procedural obligations under the Act. 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). In addition, pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) general 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)(1)(A)-(D). You state the city initially received the clarified request for information on April 13, 2015. You further state the city provided the requestor with a cost estimate pursuant to section 552.2615 of the Government Code and a request for deposit for payment of those charges on April 21, 2015. *See id.* §§ 552.2615(a), .263(a). You inform us the city received a deposit for payment of the anticipated costs on April 24, 2015; as such, you assert the date of receipt of the instant request should be April 24, 2015. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that the governmental body receives deposit or bond). However, upon review of a copy of the cost estimate, we find it does not comply with the requirements of section 552.2615(a) of the Government Code because it did not inform the requestor that inspection is an available less costly method of obtaining the requested information. *See id.* § 552.2615(a). Thus, the city's ten-business-day deadline and fifteen-business-day deadline were, respectively, April 27, 2015, and May 4, 2015. However, the request for a ruling was sent on May 8, 2015, and the submission of the information required by section 552.301(e) was sent on May 15, 2015. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find 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 requirements of 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 compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.105 and 552.107 of the Government Code for the submitted information, these exceptions are discretionary in nature. These sections serve only to protect a governmental body's interests, and may be waived; as

such, they do not constitute compelling reasons to withhold information. Open Records Decision Nos. 676 at 6 (2002) (section 552.107(1) is not other law for purposes of section 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 (1990) (statutory predecessor to section 552.105 subject to waiver). Thus, the city has waived its claims under sections 552.105 and 552.107 for the submitted information. However, we note portions of the submitted information are subject to sections 552.136 and 552.137 of the Government Code.⁴ Because these sections can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Upon review, we find the city must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental body for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Thus, to the extent the submitted information contains e-mail addresses that belong to members of the public who have not affirmatively consented to their release, the city must withhold those e-mail addresses under section 552.137 of the Government Code. However, the city may not withhold any e-mail addresses that are of the type listed in subsection 552.137(c) under section 552.137 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.136 of the Government Code. To the extent the submitted information contains e-mail addresses that belong to members of the public who have not affirmatively consented to their release, the city must withhold those e-mail addresses under section 552.137 of the Government Code. However, the city may not withhold any e-mail addresses that are of the type listed

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

in subsection 552.137(c) under section 552.137 of the Government Code. The city must release the remaining 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, 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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 571676

Enc. Submitted documents

c: Requestor
(w/o enclosures)