



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2015

Mr. Keith Mayo
Attorney
City of Whitehouse
P.O. Box 776
Whitehouse, Texas 75791-0776

OR2015-18622

Dear Mr. Mayo:

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# 584009.

The City of Whitehouse (the "city") received a request for information pertaining to a closed session of the city council. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the city did not comply with the requirements set forth in section 552.301 of the Government Code. Section 552.301 prescribes the procedures 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 the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b). The governmental body also must notify the requestor that it is seeking a decision and send the requestor a copy of the written communication to the attorney general within ten business days of receiving the request. *See id.* § 552.301(d). Additionally, under

¹Although you do not raise section 552.101 of the Government Code in your brief, we understand you to raise this exception based on the substance of your arguments.

section 552.301(e), a governmental body that seeks a decision is required to submit to the attorney general within fifteen business days of receiving the 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. *See id.* § 552.301(e). The governmental body must also send the written comments to the requestor within fifteen business days of receiving the request. *See id.* § 552.301(e-1).

The request at issue was sent to the city after business hours on July 29, 2015. Therefore, the city is considered to have received the request on July 30, 2015. We have no indication the city was closed for any business days between July 30, 2015 and August 20, 2015. Thus, we conclude the city's ten- and fifteen-business-day deadlines were August 13, 2015, and August 20, 2015. Upon review of the communications received by the requestor, we find the city notified him of the city's request for a ruling on August 12, 2015, but did not send him a copy of the city's written communication to the attorney general, as required by section 552.301(d)(2) of the Government Code. Additionally, the city did not send the requestor a copy of its written comments, as required by section 552.301(e-1). Accordingly, we conclude the city failed to comply with the requirements of 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 procedural requirements of section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information sufficient to overcome this presumption. *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Your claim under section 552.101 of the Government Code can provide a compelling reason for non-disclosure; therefore, we will consider the applicability of this exception.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 551.104 of the Open Meetings Act, chapter 551 of the Government Code. Section 551.104 provides, in part, that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). We note the city is not required to submit a certified

agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101). Such information cannot be released to a member of the public in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See* Gov't Code § 551.146(a)-(b); *see also* ORD 495 at 4. You state the requestor seeks access to the certified agenda of a closed meeting. Based on your representation, we conclude the city must withhold the requested information under section 552.101 of the Government Code in conjunction with section 551.104(c) 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 584009

Enc. Submitted documents

c: Requestor
(w/o enclosures)