



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 7, 2015

Mr. Evaristo Garcia, Jr.
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2015-21058

Dear Mr. Garcia:

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# 582240 (PIR No. W019967-071615).

The City of McAllen (the "city") received a request for information pertaining to a specified presentation. You state the city released some information. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must address the city's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). The city received the request for information on July 15, 2015. We note this office does not count the date the request was received for the purpose of calculating a governmental body's deadlines under the Act. Thus, the city's ten-business-day deadline was July 29, 2015. However, the envelope in which the city submitted the information under section 552.301(b) bears a post meter mark of July 30, 2015. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the city failed to comply with section 552.301 of the Government Code.

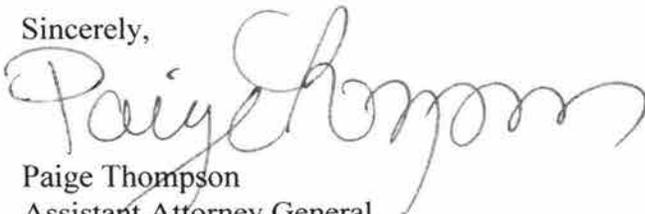
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling

reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. *See* ORD 630. The city claims sections 552.104 and 552.111 of the Government Code for the submitted information. However, these exceptions are discretionary in nature and do not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 592 (1991) (governmental body may waive statutory predecessor to section 552.104), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Accordingly, no portion of the submitted information may be withheld under section 552.104 or section 552.111 of the Government Code. Therefore, the submitted information must be released in accordance with section 552.302 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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 582240

Enc. Submitted documents

c: Requestor
(w/o enclosures)