



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 24, 2016

Ms. Delma A. Gonzalez  
City Secretary  
City of Fort Stockton  
P.O. Box 1000  
Fort Stockton, Texas 79735

OR2016-14417

Dear Ms. Gonzalez:

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# 615566.

The City of Fort Stockton (the "city") received a request for 1) all internal investigations relating to the requestor's client; (2) personnel files pertaining to the requestor's client; 3) the city's police department's policy and procedure manual, general orders, and/or standard operating procedures since a specific date; and 4) the city's position classification plan since a specific date. The city claims the requested information is excepted from disclosure under section 552.103 of the Government Code. We have received comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments.

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-14229 (2016). In that ruling, we ruled that some of the information at issue is excepted from disclosure under section 552.117 of the Government Code. However, we note the requestor in this instance is the authorized representative of one of the individuals whose information is subject to section 552.117 of the Government Code. Section 552.117 protects privacy interests. Thus, the requestor has a right of access to his client's information pursuant to section 552.023 of the Government Code and it may not be withheld from him on the basis of section 552.117 of the Government Code. *See id.* § 552.023(a) ("[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected

from public disclosure by laws intended to protect that person's privacy interests"); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, we find the circumstances have changed with respect to the requestor's client's information, and the city may not rely on Open Records Letter No. 2016-14229 as a previous determination in regard to that information. *See* Open Records Decision No. 673 at 7-8 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Therefore, the city may not withhold the requestor's client's information under section 552.117 of the Government Code in accordance with Open Records Letter No. 2016-14229, but instead must release this information to this requestor pursuant to section 552.023 of the Government Code. However, as to the remaining information that was the subject of the prior ruling, we have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Thus, the city must continue to rely on Open Records Letter No. 2016-14229 as a previous determination and withhold or release this remaining information in accordance with that ruling. ORD 673 (2001).

Next, as to the requested information which is not subject to Open Records Letter No. 2016-14229, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. 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. *See id.* § 552.301(e). As of the date of this ruling, the city has not submitted to this office a copy or representative sample of any of the requested information. Consequently, we find the city failed to comply with section 552.301 of the Government Code as to the requested information that is not subject to Open Records Letter No. 2016-14229.

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 information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. Gov't Code § 552.302; *see also 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); Open Records Decision No. 319 (1982). Normally, 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). The city asserts that the

requested information is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup> Section 552.103 is a discretionary exception that does not overcome the presumption of openness. *See, e.g., Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d469, 475-76 (Tex. App.--Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Thus, the city may not withhold the information at issue under section 552.103. We therefore conclude the city must release the information not subject to Open Records Letter No. 2016-14229 to the requestor.

In summary, with the exception of the requestor's client's information subject to section 552.117 of the Government Code, the city must continue to rely on Open Records Letter No. 2016-14229 as a previous determination and withhold or release the remaining identical information in accordance with that ruling. The city must release the remaining requested 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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 615566

c: Requestor

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<sup>1</sup>We note although the city raises "other applicable exceptions," the city has made no arguments for withholding any portion of the information at issue under any other of the Act's exceptions.