



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2013

Ms. Tara Tucker  
City Secretary  
City of Ladonia  
P.O. Box 5  
Ladonia, Texas 75449

OR2013-07548

Dear Ms. Tucker:

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# 486896.

The City of Ladonia (the "city") received a request for (1) information pertaining to a named individual, including his personnel file, background and internal investigations conducted on the named individual, e-mails sent between two different named individuals during a specified time period regarding the named individual, and arrest warrant affidavits related to the named individual; (2) agenda, meeting minutes, audio recordings, and handwritten notes pertaining to a specified city council meeting; (3) a specified chapter of the city's code of ordinances; (4) specified policies and procedures of the city's police department; (5) employment records of a specified individual; and (6) information pertaining to the city's police chief. You state you will release some information. You claim some of the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.103 of the Government Code.<sup>1</sup> We have considered the exceptions you claim.

We must address the city's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office

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<sup>1</sup>We note section 552.002 of the Government Code is not an exception to public disclosure under the Act. Rather, section 552.002 is a provision of the Act that defines "public information," for purposes of the Act.

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. Gov't Code § 552.301(e). In order for us to determine the statutory deadlines, a governmental body is required to submit to this office within fifteen business days of receiving an open records request a signed statement or other evidence showing the date the governmental body received the request. *See id.* § 552.301(e)(1)(C). In this instance, you do not inform us of the date the city received the request. Because you do not inform us when the request was received, we must assume the city received the request on the day it was dated, which is February 19, 2013. Accordingly, the city's fifteen-business-day deadline was March 12, 2013. However, as of the date of this letter, you have not submitted a copy or representative sample of the responsive information. Therefore, we find the city failed to comply with the requirements of section 552.301(e).

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, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). 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). Section 552.103 of the Government Code is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Sections 552.101 and 552.102 of the Government Code are mandatory exceptions to disclosure. However, because you have not submitted a copy or representative sample of the information at issue for our review, we have no basis for finding any of the requested information excepted from required disclosure or confidential by law. Therefore, we must order the city to release the information at issue pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you 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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Kathleen J. Santos".

Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/som

Ref: ID# 486896

Enc. Submitted documents

c: Requestor  
(w/o enclosures)