



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 14, 2016

Ms. Mayra Gonzales
City Secretary
City of Galena Park
P.O. Box 46
Galena Park, Texas 77547

OR2016-23176

Dear Ms. Gonzales:

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# 630346.

The City of Galena Park (the "city") received two requests from different requestors. The first requestor seeks (1) the first and last invoice the city attorney "has summated [sic] to the [c]ity for payment[.]" and (2) certain information pertaining to an unemployment claim by a named former employee. The second requestor seeks the "paperwork in regards to [the named former employee's] unemployment claim." You claim the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim.

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), the 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* Gov't Code § 552.301(a), (b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons why the claimed 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). We note the city received the first request for information on July 22, 2016. You do not inform us the city was closed for any business days between July 22, 2016, and August 5, 2016. Accordingly, the city's ten-business-day deadline was August 5, 2016, with respect to the first request. However, the envelope in which you submitted the information under section 552.301(b) bears a post meter mark of August 8, 2016. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Further, as of the date of this letter, you have not submitted for our review a copy or representative sample of the information requested by either requestor. Accordingly, 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 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). Because the city failed to comply with the procedural requirements of the Act, the city has waived all of its discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the city also raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the requested information released pursuant to section 552.302. 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.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,

A handwritten signature in black ink, appearing to read 'Kenny Moreland', written in a cursive style.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/akg

Ref: ID# 630346

c: Requestor