



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2016

Mr. John P. Beauchamp
General Counsel for the Commission
Texas Commission on Law Enforcement
6330 East Highway 290, Suite 200
Austin, Texas 78723

OR2016-24079

Dear Mr. Beauchamp:

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# 632188.

The Texas Commission on Law Enforcement (the "commission") received a request for records pertaining to two named individuals. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-20915 (2016). In that ruling, we determined the commission must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, we conclude the commission must continue to rely on Open Records Letter No. 2016-20915 (2016) as a previous determination and withhold the identical information in accordance with that information. *See* Open Records Decision No. 673 (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 information is or is not excepted from disclosure).

Next, we note the submitted information is not responsive to the request for information because it does not pertain to the named individuals. This ruling does not address the public availability of any information that is not responsive to the request, and the commission is not required to release this information in response to this request.

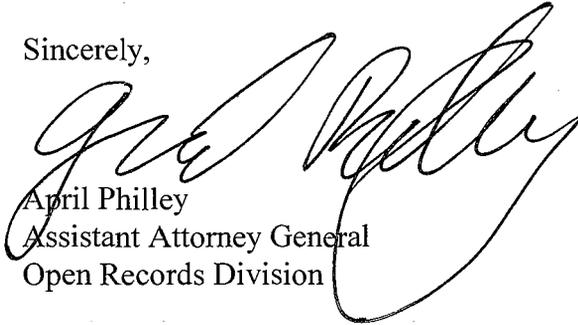
Next, we must address the commission's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the 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). You state the commission received the request on July 28, 2016. As of the date of this letter, you have not submitted a copy or representative samples of the information requested. Consequently, we find the commission failed to comply with the requirements of section 552.301(e) in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. *Id.* § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.*; *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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). Because the commission failed to comply with the requirements of the Act, the commission has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 665 at 2 n.5 (2000) (untimely request for decision results in waiver of discretionary exceptions). Although the commission 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 of the Government Code. If you believe the information is confidential and may not 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,



April Philley
Assistant Attorney General
Open Records Division

AP/akg

Ref: ID# 632188

Enc. Submitted documents

c: Requestor
(w/o enclosures)