



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2006

Mr. John Danner
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2006-07699

Dear Mr. Danner:

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# 254157.

The City of San Antonio (the "city") received a request for code compliance records, including the identities of complainants, related to a specified address from November 2003 to the present. You claim that some of the requested 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 must address the city's procedural obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). You state that the city received the request for information on April 18, 2006. On April 27, 2006, you state that the city sought clarification from the requestor regarding the scope of her request. *See id.* § 552.222; *see also* Open Records Decision No. 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). Thus, the ten-business-day deadline under section 552.301(b) was tolled on the date that the city sought clarification from the requestor. *See* Gov't Code § 552.301(b); *see also* Open Records Decision No. 663 at 5 (1999) (providing that ten-day period is tolled during the clarification process). You state that the city received verbal

clarification from the requestor on May 5, 2006. Accordingly, the ten-business-day deadline for requesting a decision from our office resumed on May 8, 2006. Therefore, the deadline for submitting a request to our office was May 10, 2006. However, you did not submit your request for a decision to our office until May 11, 2006. Thus, we find that the city failed to comply with the procedural requirements of section 552.301.

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* Gov't Code § 552.302; *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); 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). You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code in conjunction with the common law informer's privilege. Section 552.101, which encompasses "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," generally can provide a compelling reason to overcome this presumption of openness. *See* Open Records Decision No. 630 (1994). The informer's privilege, however, is held by the governmental body and serves to protect its interests in preserving the flow of information to the governmental body. *See Roviato v. U.S.*, 353 U.S. 53, 59 (1957). Accordingly, a governmental body is free to waive the informer's privilege and release information for which it otherwise could claim the exception. Open Records Decision No. 549 at 6 (1990). Thus, the informer's privilege does not constitute a compelling reason to overcome the presumption of openness. Therefore, the city may not withhold any of the submitted information under section 552.101 on the basis of the informer's privilege. Consequently, the submitted information must be released to the requestor.¹

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

¹We note that the information being released includes Texas motor vehicle information that is excepted from disclosure to the general public under section 552.130 of the Government Code. In this instance, however, the requestor has a special right of access to such information. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on the grounds that information is considered confidential by privacy principles). If the city receives a future request for this information from a person other than the requestor or her authorized representative, the city should again seek our decision.

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 254157

Enc. Submitted documents

c: Ms. Maria Espinoza
6023 Clearbrook
San Antonio, Texas 78238
(w/o enclosures)