



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 1, 2009

Ms. Kristy Ashberry
City Secretary
City of Rockwall
385 South Goliad
Rockwall, Texas 75087

OR2009-12363

Dear Ms. Ashberry:

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# 353986.

The City of Rockwall (the "city") received a request for information related to a complaint made against the requestor.¹ You claim that 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(e) of the Government Code, a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the 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). As of the date of this ruling, you have not submitted to this office a copy of the written request for information. Consequently, we find that the city has 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

¹As you have not submitted a copy of the request, we take our description from your brief.

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; *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). 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. *See* Open Records Decision No. 150 at 2 (1977).

Although you raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege, the purpose of the informer's privilege is to protect the flow of information to a governmental body rather than to protect a third person. Thus, the informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the city may not withhold any of the requested information under the informer's privilege. As you raise no further exceptions against disclosure, the requested information must be released.

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, 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 353986

Enc. Submitted documents

c: Requestor
(w/o enclosures)