



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 30, 2015

Ms. Aimee Alcorn  
Assistant City Attorney  
Legal Department  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2015-15579

Dear Ms. Alcorn:

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# 573550 (File Nos. 529, 533, & 565).

The City of Corpus Christi (the "city") received three requests from the same requestor for information relating to a specified report. The city claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

Initially, we must address the city's procedural 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), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). The city received the first request for information on May 4, 2015. The city does not inform us it was closed for business on any of the days at issue. Thus, the city's ten-business-day deadline was May 18, 2015. However, the envelope in which the city requested a ruling from this office regarding the first request bears a post meter mark of May 21, 2015. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we find the city failed to comply with

the procedural requirements of section 552.301 of the Government Code with regard to the first request for information.

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). The city seeks to withhold some of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The purpose of the common-law 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's assertion of the informer's privilege does not provide a compelling reason for non-disclosure under section 552.302, and the city may not withhold the information at issue under section 552.101 of the Government Code on that basis in response to the first request. We note in waiving this claim for the information responsive to the first request, the city also waived this claim for the same information with respect to the second and third requests for information. However, the city also claims section 552.101 in conjunction with section 554.002 of the Government Code and section 552.152 of the Government Code for some of the submitted information. These claims can provide compelling reasons to overcome the presumption of openness. Therefore, we will address the city's arguments under these sections.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The city claims section 552.101 in conjunction with section 554.002 of the Government Code. Section 554.002 provides the following:

- (a) A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority.
- (b) In this section, a report is made to an appropriate law enforcement authority if the authority is part of a state or local governmental entity or of

the federal government that the employee in good faith believes is authorized to:

- (1) regulate under or enforce the law alleged to be violated in the report; or
- (2) investigate or prosecute a violation of criminal law.

*Id.* § 554.002. Section 554.002 of the Government Code protects a public employee who in good faith reports a violation of law from adverse personnel action by a state or local governmental entity. We note section 554.002 does not expressly make information confidential. A statutory confidentiality provision must be express, and a confidentiality requirement will not be implied from a statutory structure. *See* Open Records Decision No. 658 at 4 (1998); *see also* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Therefore, because section 554.002 does not make information confidential for purposes of the Act, the information the city has marked may not be withheld under section 552.101 on that basis.

Section 552.152 of the Government Code provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Gov't Code § 552.152. The city states the information it has marked reveals the identity of an employee who came forward to complain about another employee's misconduct. The city informs us the supervisor of the employee at issue has concerns for the employee's safety if his identity is released. The city states these concerns are based on allegations that the requestor is a bully, uses a lot of foul language, has family in prison, and was angry about the way the investigation at issue was handled. Upon review, we find the city has failed to demonstrate the release of the information at issue would subject the employee at issue to a substantial threat of physical harm. Thus, the city may not withhold the information it has marked under section 552.152 of the Government Code. As the city raises no other exceptions to disclosure, it must release the submitted information.

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](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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 573550

Enc. Submitted documents

c: Requestor  
(w/o enclosures)