



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 21, 2016

Ms. Heather Silver  
Assistant City Attorney  
Office of the City Attorney  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2016-06402

Dear Ms. Silver:

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# 602142.

The City of Dallas (the "city") received a request for information pertaining to complaints made against the requestor and his property. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code and rule 508 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

The city acknowledges, and we agree, the city did not comply with the procedural requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a governmental body demonstrates a compelling reason to withhold 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 (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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). 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). In addition, the city raises Texas Rule of Evidence 508 for this information. However, this office has determined that discovery privileges, such as the informer's privilege under rule 508, do not provide a compelling reason to overcome the presumption of openness under section 552.302 of the Government Code. *See e.g.*, Open Records Decision No. 676 at 11 (2002) (assertion of rule 503 does not demonstrate "compelling reason" under section 552.302 to prohibit governmental body's release of information). 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 in conjunction with the informer's privilege or under rule 508. However, the city raises section 552.101 in conjunction with a judicial decision. Section 552.101 in conjunction with a judicial decision can provide a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of this section to the submitted information.

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 some of the submitted information is protected by the informer's privilege pursuant to judicial decision and cites to *Scher v. United States*, 305 U.S. 251 (1938). However, upon our review, we find this case does not determine the confidentiality of any information for purposes of the Act. Therefore, we find that none of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with *Scher v. United States*. As no other exceptions to disclosure have been raised, the submitted 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.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,

A handwritten signature in black ink that reads "Kavid Singh". The signature is written in a cursive style with a large initial 'K' and 'S'.

Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/bhf

Ref: ID# 602142

Enc. Submitted documents

c: Requestor  
(w/o enclosures)