



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 30, 1996

Ms. Janet M. Dill
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR96-1566

Dear Ms. Dill:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 100377.

On May 24, 1996, the City of Dallas (the "city") received an open records request for all records relating to complaints made and inspections of a specified business. On June 7, 1996, the city asked this office to render an open records decision on whether the city may withhold from required public disclosure the requested information, or portions thereof, pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege, and section 552.108 of the Government Code.

Section 552.301(a) of the Government Code provides that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. *The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th calendar day after the date of receiving the request.* (Emphasis added).

Since the city received the request on May 24, 1996, and requested a decision from this office on June 7, 1996, the city failed to meet the ten-day period mandated by section 552.301(a). Because the city did not request an attorney general decision within the time

provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.301; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

To overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. A compelling reason that overcomes the presumption of openness will generally only be found when the information falls within an exception to disclosure that is designed to protect the interests of a third party. *See Open Records Decision No. 552. (1990).*

You assert that the informer's privilege, in connection with section 552.101 of the Government Code, exempts from required public disclosure certain requested information. The informer's privilege under section 552.101 protects a governmental body's interests rather than the interests of a third party, and may be waived. Open Records Decision No. 549 (1990) at 5-6. Consequently, the fact that information may fall within the informer's privilege does not alone constitute a compelling reason sufficient to overcome the presumption of openness that arises when a governmental body fails to request an attorney general decision with ten days of receiving an open records request. Thus, the city may not withhold the requested information from required public disclosure based on the informer's privilege under section 552.101 of the Government Code.

The city also asserts that the requested information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 is discretionary with the governmental entity asserting the exception. Open Records Decision No. 177 (1977). A governmental body's failure to assert section 552.108 on its own behalf is insufficient to overcome the presumption of openness. *Cf. Open Records Decision No. 586 (1991)* (when governmental body has missed ten day deadline, assertion of law enforcement exception on behalf of other governmental body is sufficient to overcome presumption of openness). Thus, you have failed to demonstrate a compelling reason why the information should not be disclosed and you must release the requested information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

Ref.: ID# 100377

Enclosures: Submitted documents

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(w/o enclosures)