



January 20, 2000

Mr. Gary C. Landers
City Attorney
City of Tyler
Legal Department
P.O. Box 2039
Tyler, Texas 75710

OR2000-0195

Dear Mr. Landers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131308.

The City of Tyler (the "city") received a request for information related to an investigation of a former city employee. 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 have reviewed the submitted information.

The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. Gov't Code § 552.301. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When the request for a decision is not submitted within the time period prescribed by section 552.301, the requested information is presumed to be public and must be released. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. Gov't Code § 552.302; *see, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The city did not provide this office with a statement indicating when the request for public information was received by the city. *See* Gov't Code § 552.301(e). Therefore, the only indication of the date the request was received is the date on the request, October 25, 1999.

Assuming that this is the date the city received the request, you were required to submit the request for a ruling on or before November 8, 1999. Your request was postmarked November 9, 1999, more than ten business days after the date the city received the request for information. Consequently, you have not met your statutory burden under section 552.301(b) and the requested information is therefore presumed public. In the absence of a demonstration that the requested information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978).

You assert that the information at issue is made confidential pursuant to section 552.101 of the Government Code under the informer's privilege. The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege, however, protects the interest of the governmental body, not that of a third person. Open Records Decision No. 549 at 5 (1990). Thus, it may be waived by a governmental body. *Id.* at 6. We conclude that you have waived your informer's privilege claim under section 552.101 by your failure to request a decision from our office within ten business days pursuant to section 552.301(b). Therefore, the information may not be withheld under the informer's privilege.

However, we note that some of the submitted information is excepted from disclosure under section 552.130 of the Government Code and provides a compelling reason for non-disclosure because it protects the interests of third parties. Section 552.130 of the Government Code provides as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

In accordance with section 552.130, the city must withhold the submitted drivers' license numbers. For your convenience, we have marked the type of information that is subject to section 552.130.

We additionally note that the submitted information appears to contain information which may be excepted from disclosure and provide a compelling reason for non-disclosure. Section 552.117 of the Government Code excepts from disclosure the home addresses, telephone numbers, and social security numbers of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. The city may not, however, withhold this information for a current or former official or employee who made a request for confidentiality under section 552.024 after the request for this information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). You have not submitted to this office information that demonstrates that the city employees elected to keep their home addresses, home phone numbers, and family information confidential prior to the date on which the city received the request for information. Thus, we are unable to determine whether the city must withhold the information under section 552.117. If the employees have made such an election, the city must not release the home addresses, home phone numbers, and family information related to those employees. The information protected by sections 552.130 and 552.117 must be withheld. The remaining information, however, must be released.

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 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 131308

Encl. Marked documents

cc: Mr. Dan McLean
516 South Spring Street
Tyler, Texas 75702
(w/o enclosures)