



January 14, 2002

Mr. Greg S. Boling
Brown & Hofmeister
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2002-0221

Dear Mr. Boling:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157280.

The City of Highland Village (the "city"), which you represent, received a written request for the name, address, and telephone number of the individual who filed a complaint against the requestor regarding a barking dog. You contend that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege.

Before we address the applicability of the exception you raised, we must first address certain procedural matters. Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office within fifteen business days of receipt of an information request both "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld" and "a copy of the specific information requested, or . . . representative samples of the information if a voluminous amount of information was requested." Gov't Code § 552.301(e)(1)(A), (D). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. You have failed to submit the information required by subsections (e)(1)(A) and (e)(1)(D); consequently, the requested information is presumed to be public.

A compelling interest sufficient to overcome the presumption of openness may arise when a third-party's interests are at stake. Open Records Decision No. 552 at 1 (1990). However, the informer's privilege is designed to protect the government's interests, and thus, the existence of this privilege by itself does not demonstrate a compelling interest to withhold

the information. Open Records Decision No. 549 (1990) (informer's privilege waivable). Furthermore, you have not provided any specific information that would constitute a compelling reason for withholding the identity of the complainant in this particular instance. Therefore, because you have not presented this office with a compelling reason why the requested information should be withheld, the city must release the complainant information to the requestor.

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).

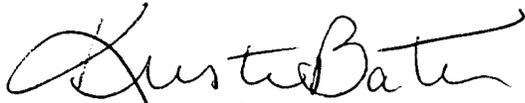
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

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,

A handwritten signature in black ink that reads "Kristen Bates". The signature is written in a cursive style with a large, looping initial "K".

Kristen A. Bates
Assistant Attorney General
Open Records Division

KAB/RWP/sdk

Ref: ID# 157280

c: Mr. Russell S. Brown
116 Sunday Haus Lane
Highland Village, Texas 75077