



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2006

Ms. Leann D. Guzman
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2006-05312

Dear Ms. Guzman:

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# 250161.

The City of Fort Worth (the "city") received a request for all the records from the city's animal control department regarding a specific address. You state that you will release the majority of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code. Section 552.301(b) provides: (b) The governmental body must ask for the attorney generals decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). You state that the city received the present request for information on February 24, 2006. Accordingly, you were required to submit your request for a decision from this office no later than March 10, 2006. We received your request for a decision on March 23, 2006. Consequently, we determine, and you acknowledge, that the city failed to request a decision within the ten business day period as mandated by section 552.301(b) of the Government Code.

Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide a compelling reason why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); see Open Records Decision No. 630 (1994). Normally, a compelling reason exists when third-party interests are at stake, or when information is confidential under other law. See Open Records Decision No. 150 (1977). Although you assert that the submitted information is excepted from disclosure pursuant to the common-law informer's privilege, this exception is a discretionary exception to disclosure which may be waived and therefore does not constitute a compelling reason to overcome the presumption that the information is public. See Gov't Code § 552.007; see also Open Records Decision Nos. 549 at 6 (1990) (governmental body may waive common-law informer's privilege), 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, none of the submitted information may be withheld from disclosure under the common-law informer's privilege. As you raise no further exceptions against disclosure, the submitted information must be released to the requestor in its entirety.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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,



Matthew T. McLain
Assistant Attorney General
Open Records Division

MM/krl

Ref: ID# 250161

Enc. Submitted documents

c: Ms. Kristen Mangus
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(w/o enclosures)