



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2006

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 53404
Grand Prairie, Texas 75053-4045

OR2006-11497

Dear Mr. Alcorn:

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# 260986.

The City of Grand Prairie (the "city") received a request for "all information on reports filed about the animals at [the requestor's] address, including [the] names of persons filing report[s]." You state that some responsive information has been released to the requestor. You seek to withhold the identifying information of the person who filed such a report under section 552.101 of the Government Code in conjunction with the informer's privilege. 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, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a signed statement or sufficient evidence showing the date the governmental body received the written request. *Id.* § 552.301(e)(1)(C).

You do not inform us when the city received this request for information. The request for information bears a facsimile date of July 13, 2006, and the city has not submitted to us a

signed statement or sufficient evidence establishing that the city received the request on a different date.¹ Because you do not inform us when the request was received, we assume that the city received the request on July 13, 2006. The city did not request a decision from this office until July 28, 2006. Accordingly, we conclude that the city failed to comply with the procedural requirements mandated by section 552.301. *See id.* § 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. 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).

¹Your letter requesting a ruling states that the city received the request "[p]rior to vacation in our office," but does not specify the date on which the city received the request.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 260986

Enc. Submitted documents

c: Molakia Martin
2436 Harbour Drive
Grand Prairie, Texas 75054
(w/o enclosures)