ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2008

Ms. Cherl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton, 3rd Floor
Fort Worth, Texas 76102

OR2008-11759

Dear Ms. Byles:

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# 320079.

The City of Fort Worth (the "city") received a request for information pertaining to a specified address. You state that you are releasing some of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code and Texas Rule of Evidence 508. We have considered the exception you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that you did not comply with the time periods prescribed by section 552.301(b) of the Government Code in seeking an open records decision from this office. *See* Gov't Code § 552.301. When a governmental body fails to comply with the procedural requirements of section 552.301 the information at issue is presumed public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See id.* Generally, a compelling reason exists when some other source of law makes the information confidential or third party interests are at stake. *See* Open Records Decision No. 630 at 3 (1994). You have raised section 552.101 of the Government Code in conjunction with the common-law informer's privilege and Rule 508. Because the purpose of the common-law informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person, the common-law informer's privilege, unlike other claims under section 552.101 of the Government Code, can be waived. *See* Open Records Decision

No. 549 at 6 (1990). Thus, the common-law informer's privilege does not constitute a compelling reason to withhold information for purposes of section 552.302. Similarly, the applicability of Rule 508, a discovery privilege to refuse to disclose the identity of a person who furnished certain information to law enforcement officers and others, is not a compelling reason to overcome the presumption of openness. *Cf.* Open Records Decision No. 676 at 10-11 (2002) (concluding applicability of attorney-client privilege not compelling). Because section 552.101 in conjunction with common-law privacy can provide a compelling reason for non-disclosure, we will address your argument under this exception.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. Information must be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* We find that you have failed to demonstrate that release of any of the submitted information would cause an imminent threat of physical danger. Accordingly, you have not shown "special circumstances" sufficient to justify withholding any of the submitted information from public disclosure. Furthermore, we find that the submitted information is not private. *See Indus. Found.*, 540 S.W.2d 688. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law right of privacy. As you raise no other exceptions against disclosure, the submitted information must be released 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,

Bill Dobie
Assistant Attorney General
Open Records Division

WJD/jh

Ref: ID# 320079

Enc. Submitted documents

c: Mr. James Banks
P.O. Box 19127
Fort Worth, Texas 76119
(w/o enclosures)