



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2009

Mr. Michael K. Kallas
Boyle & Lowry, L.L.P.
4201 Wingren, Suite 108
Irving, Texas 75062-2763

OR2009-04687

Dear Mr. Kallas:

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# 338165.

The City of Hurst (the "city"), which you represent, received a request for 1) all documents, including warnings, complaints, or concerns during a specified time period pertaining to three specified individuals, and 2) all documents, including warnings, complaints, or concerns during a specified time period pertaining to a specified address. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address the city's procedural obligations under the Act. Because this office felt that it needed additional information to determine whether the city had previously received a request from the requestor's client, this office requested by correspondence sent to you by facsimile on March 25, 2009 an explanation as to whether the city received such a request, and if so, in what fashion the city responded to that request. *See* Gov't Code § 552.303. The March 25, 2009 correspondence informed you that the city had seven calendar days to submit to this office the additional information requested. *Id.* § 552.303(d). Although you responded to our correspondence, you did not do so in a timely manner. *See id.* § 552.303(e). Pursuant to section 552.303(e) of the Government Code, a governmental body's failure to comply with the requirements of section 552.303(d) results in the legal presumption that the requested information is subject to required public disclosure and must be released, unless the governmental body demonstrates a compelling reason to withhold the

¹Although you also raise section 552.022 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See* Gov't Code § 552.022.

information from disclosure. *See id.* § 552.303(e); 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 raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege, the purpose of the informer's privilege is to protect the flow of information to a governmental body rather than to protect a third person. Thus, the informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Similarly, sections 552.103 and 552.108 are discretionary exceptions, and may also be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally); 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions); 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the city may not withhold any of the requested information under the informer's privilege, section 552.103, or section 552.108 of the Government Code.² We note, however, that some of the submitted information may be subject to section 552.130 of the Government Code, which can provide a compelling reason to overcome this presumption.³ Therefore, we will consider whether this section requires you to withhold some of the submitted information.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The city must withhold the Texas motor vehicle record information we have marked under section 552.130. As you raise no further exceptions to disclosure, the remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

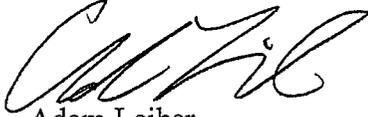
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php,

²We note that information has been redacted from the documents that you submitted to this office in requesting this decision. As we are able in this instance to discern the nature of the redacted information, we will determine whether it is excepted from public disclosure. In the future, however, the city should refrain from redacting any information that it submits to this office in seeking an open records ruling. *See id.* §§ 552.301(e)(1)(D), .302.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/jb

Ref: ID# 338165

Enc. Submitted documents

c: Requestor
(w/o enclosures)