



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2011

Ms. Caroline Rush
Public Informer Officer
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

OR2011-11392

Dear Ms. Rush:

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# 426261 (COSA File No. W001220-051811).

The City of San Antonio (the "city") received a request for "all correspondence between District 5 Council office and the . . . City's Manager's Office, Code Enforcement and Zoning" regarding a specified address, entity, or the requestor. You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

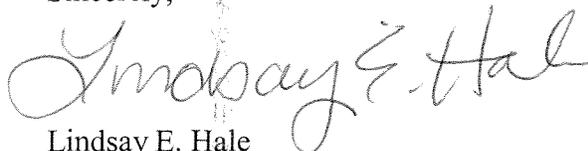
You acknowledge and we agree that the city did not comply with its ten-business-day deadline under section 552.301 of the Government Code in requesting this decision. Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *see also Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. The city seeks to withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. 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 informer's privilege, unlike other claims under section 552.101, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the city's assertion of the informer's privilege does not provide a compelling reason for non-disclosure under section 552.302. The city also seeks to withhold portions of the submitted information under section 552.108 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not provide a compelling reason for non-disclosure under section 552.302. Accordingly, the city may not withhold any of the submitted information under section 552.101 in conjunction with the common-law informer's privilege or under section 552.108. As you raise no further exceptions against disclosure, the city must release the submitted information.

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, 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, toll free at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 426261

Enc. Submitted documents

c: Requestor
(w/o enclosures)