



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 21, 2011

Ms. Alicia Richardson
City Secretary
City of Southlake
1400 Main Street, Suite 270
Southlake, Texas 76092

OR2011-17149

Dear Ms. Richardson:

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# 438808.

The City of Southlake (the "city") received a request for information relating to complaints made against homeowners in the Southlake Hills subdivision from 2005 through 2011. You claim some of the 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.

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(e)(1)(B), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. *See* Gov't Code § 552.301(e)(1)(B). The city received the request for information on September 20, 2011. Thus, the city's fifteen-day deadline to submit a copy of the written request for information was October 11, 2011. However, the city submitted a copy of the written request to this office by facsimile transmission on October 12, 2011. Thus, the city failed to comply with the procedural requirements mandated by section 552.301(e)(1)(B).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption 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; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *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). You assert some of the submitted information is confidential under the common-law informer's privilege. However, the common-law informer's privilege is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision No. 549 at 6 (1990) (purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect third party); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, the city's claim under the common-law informer's privilege is not a compelling reason to overcome the presumption of openness, and the city may not withhold any of the submitted information on that ground. Accordingly, the city must release the submitted information 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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 438808

Enc. Submitted documents

c: Requestor
(w/o enclosures)