



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2012

Ms. Cathy Bourg
Deputy City Secretary
City of Burleson
141 West Reno
Burleson, Texas 76028-4261

OR2012-03952

Dear Ms. Bourg:

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# 452388.

The City of Burleson (the "city") received a request for a specified animal control complaint. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we must address the city's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). In this instance, you state the city received the request for information on February 8, 2012. Accordingly, the ten-business-day deadline was February 23, 2012. The city's request for a decision, however, bears a post office mark reflecting it was mailed on February 27, 2012. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the city failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information

is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You raise section 552.101 of the Government Code in conjunction with the common-law informer's privilege and section 552.108 of the Government Code. 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. Thus, the informer's privilege, unlike other claims under section 552.101, is discretionary and may be waived. *See* Open Records Decision No. 549 at 6 (1990). Section 552.108 is also a discretionary exception that protects only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, the common-law informer's privilege and section 552.108 do not constitute compelling reasons to withhold information for purposes of section 552.302, and none of the submitted information may be withheld on those bases. However, we note a portion of the submitted information is subject to section 552.130 of the Government Code¹, which can provide a compelling reason to withhold information. Thus, we will address section 552.130.

Section 552.130 of the Government Code exempts from disclosure information that relates to a motor vehicle operator's or driver's license, title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1)-(2). Therefore, the city must withhold the information we have marked under section 552.130. As you raise no additional 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, or call the Office of the Attorney General's Open Government Hotline, toll free,

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink that reads "Misty Haberer Barham". The signature is written in a cursive, flowing style.

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 452388

Enc. Submitted documents

c: Requestor
(w/o enclosures)