



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2012

Ms. Leticia Brysch  
City Clerk  
City of Baytown  
P.O. Box 424  
Baytown, Texas 77522-0424

OR2012-06043

Dear Ms. Brysch:

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# 451864 (PIR #4032).

The City of Baytown (the "city") received a request for the name and address of the person who submitted a specified complaint to the city. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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(e), within fifteen business days of receipt of the request the governmental body must submit to this office, among other items, written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld and a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code § 552.301(e)*. In this instance, you state the city received the request for information on February 6, 2012. Accordingly, the fifteen-business-day deadline was February 28, 2012. The city's request for a decision, however, bears a post office mark reflecting it was mailed on February 29, 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 seek to withhold the information at issue under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, 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, may be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the assertion of the informer's privilege does not provide a compelling reason for non-disclosure under section 552.302, and the city may not withhold any portion of the requested information on that basis.

We next note most of the information you have submitted is not responsive to the instant request, which seeks only the name and address of the individual at issue. This ruling does not address the public availability of non-responsive information, and the city is not required to release non-responsive information in response to this request. As you raise no additional exceptions to disclosure, the responsive 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](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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/som

Ref: ID# 451864

Enc. Submitted documents

c: Requestor  
(w/o enclosures)