



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2014

Ms. Josette Flores
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2014-03180

Dear Ms. Flores:

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# 514540 (ORR# 13-1005-701).

The City of El Paso (the "city") received a request for the identity of the individual who made a complaint regarding the requestor's dog. You claim the submitted 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.

Initially, we note you have submitted information other than the identity of the individual at issue. Therefore, that information is not responsive to the present request. The city need not release non-responsive information in response to the request, and this ruling will not address that information.

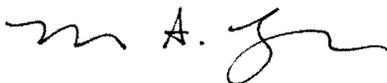
Next, we note, and you acknowledge, the city has not complied with the time periods prescribed by section 552.301 of the Government Code in seeking an open records decision from this office. Gov't Code § 552.301. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public and must be released unless there is a compelling reason to withhold it. *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 governmental body may demonstrate a compelling reason to withhold information by a showing the information is made confidential by another source of law or affects third-party interests. *See* 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. 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. Accordingly, the city may not withhold the responsive information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As you raise no other exceptions to disclosure, the city must release the responsive 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 514540

Enc. Submitted documents

c: Requestor
(w/o enclosures)