



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 24, 2017

Ms. Theresa Pham
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2017-01556

Dear Ms. Pham:

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# 642381 (ORR# C001573).

The City of Dallas (the "city") received a request for a specified fair housing discrimination case file. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). The city received the request for information on October 25, 2016. You do not inform us the city was closed for any business days between October 25, 2016, and November 8, 2016. Accordingly, you were required to provide the information required by section 552.301(b) by November 8, 2016. However, this office

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

received the information required by section 552.301(b) of the Government Code through this office's electronic filing system on November 9, 2016. Accordingly, we conclude the city failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 requested information is public and must be released unless there is 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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. The city claims section 552.107 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Gov't Code § 552.007; Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under Gov't Code § 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.107 of the Government Code. However, as section 552.101 of the Government Code makes information confidential and thus is a compelling reason to overcome the presumption of openness, we will address your argument under section 552.101 against disclosure of the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You assert some of the submitted information is confidential under section 103.330 of title 24 of the Code of Federal Regulations, section 3610 of title 42 of the United States Code, and section 301.085 of the Property Code. *See* 24 C.F.R. § 103.330; *see also* 42 U.S.C. § 3610(b); Prop. Code § 301.085. Part 103 applies to complaints alleging discriminatory housing practices because of race, color, religion, sex or national origin, and complaints alleging discriminatory housing practices on account of handicap or familial status occurring on or after March 12, 1989. 24 C.F.R. § 103.1(b). Upon the filing of a complaint, both federal and state law mirror each other in language and encourage conciliation to the extent feasible. Section 103.330 provides the following:

- (a) Except as provided in paragraph (b) of this section and § 103.230(c), nothing that is said or done in the course of conciliation under this part may be made public or used as evidence in a subsequent administrative hearing under part 180 or in civil actions under title VIII of the Fair Housing Act, without the written consent of the persons concerned.

Id. § 103.330(a); *see id.* § 103.9 (defining conciliation for purposes of part 103). Section 3610 of title 42 of the United States Code provides, in pertinent part:

(d) Prohibitions and requirements with respect to disclosure of information

(1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

42 U.S.C. § 3610(d)(1). Section 301.085 of the Property Code provides, in pertinent part:

(e) Statements made or actions taken in the conciliation may not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned.

Prop. Code § 301.085(e). You argue the information at issue consists of statements made or actions taken in the course of conciliation in relation to a fair housing complaint. You do not indicate all concerned parties have consented to the release of the information at issue. Upon review, we find the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with federal law and section 301.085 of the Property Code. However, we note the remaining information consists of information related to a housing discrimination complaint. Although you contend this information is protected under the federal and state laws, we find it consists of things neither said nor done in the course of conciliation. Further, we find the information consists of neither statements made nor actions taken in conciliation. Accordingly, we find the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 103.330 of title 24 of the Code of Federal Regulations, section 3610 of title 42 of the United States Code, or section 301.085(e) of the Property Code.

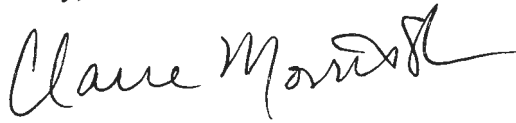
We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Open Records Decision No. 180 at 3 (1977)*. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see Open Records Decision No. 109 (1975)*. If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with federal law and section 301.085 of the Property Code. The city must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 642381

Enc. Submitted documents

c: Requestor
(w/o enclosures)