



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 12, 2017

Ms. Lola Dada-Olley
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2017-20837

Dear Ms. Dada-Olley:

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# 681700 (File No. 17-088).

The City of Plano (the "city") received a request for information pertaining to certain types of complaints in a specified area during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). In this instance, you state, and submit documentation demonstrating, the city received the request for information on August 9, 2017. Accordingly, the city's ten-business-day deadline was August 24, 2017. Although you timely raised section 552.101 of the Government Code, you did not raise section 552.103 of the Government Code until after the ten-business-day deadline passed. Consequently, we find the city failed to comply with the procedural requirements of section 552.301 with respect to its claim under section 552.103.

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). By failing to timely raise section 552.103 of the Government Code, we find the city has failed to establish a compelling reason to address its claim under this section. Accordingly, the city may not withhold any portion of the submitted information under section 552.103 of the Government Code. However, we will consider the city's timely raised exception for the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *Open Records Decision No. 279 at 1-2 (1981)* (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988)*. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. *Open Records Decision No. 549 at 5 (1990)*.

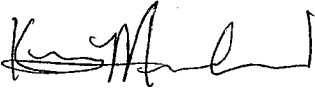
You contend the information you seek to withhold reveals the identity of an individual who reported a violation of law to the city's Animal Services Department. However, we find you have not demonstrated the information at issue consists of the identifying information of a complainant. Therefore, the city may not withhold the information at issue under section 552.101 on the basis of the common-law informer's privilege. As you raise no further exceptions to disclosure, the city must release the submitted information.¹

¹We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See Gov't Code § 552.023; see also Open Records Decision No. 481 at 4 (1987)*. Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office.

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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/gw

Ref: ID# 681700

Enc. Submitted documents

c: Requestor
(w/o enclosures)