



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2018

Ms. Bianca Johnson
Open Records Coordinator
Dallas Animal Services
City of Dallas
1818 North Westmoreland
Dallas, Texas 75212

OR2018-01399

Dear Ms. Johnson:

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# 692802 (COD ORR# C007954-101717).

The City of Dallas (the "city") received a request for information pertaining to specified types of complaints at a specified location during a specified time period. The city states it will release some information to the requestor. The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the city's claimed exception and reviewed the submitted representative sample of information.²

¹We note the city also claims the informer's privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *see also* Gov't Code § 552.022(a). In this instance, section 552.022 is not applicable to the information the city seeks to withhold under the informer's privilege. Therefore, we do not address the city's argument under rule 508.

²We 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.

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 17, 2017. The city does not inform us it was closed for any business days between October 17, 2017, and October 31, 2017. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the city was required to provide the information required by section 552.301(b) by October 31, 2017. However, the envelope in which the city provided the information required by section 552.301(b) was postmarked November 1, 2017. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, 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). Although the city claims section 552.101 of the Government Code in conjunction with the common-law informer's privilege for portions of the submitted information, we find the city has failed to establish a compelling reason to address this argument.

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. The city also claims some of the submitted information is protected by the judicial decision in *Scher v. United States*, 305 U.S. 251 (1938). However, upon our review, we find this case does not determine the confidentiality of any information for purposes of the Act. Therefore, we find that none of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with *Scher v. United States*. Accordingly, the city must release the submitted information pursuant to section 552.302 of the Government Code.

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/tdw

Ref: ID# 692802

Enc. Submitted documents

c: Requestor
(w/o enclosures)