



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 24, 2019

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

OR2019-02185

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# 747505 (ORR# C009835-102518).

The City of Dallas (the "city") received a request for any records pertaining to investigations by the city's animal services in a specified zip code during a certain time period. You state you will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we must address the city's 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. *See* Gov't Code § 552.301. Pursuant to section

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<sup>1</sup>We note you also claim 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 you seek to withhold under the informer's privilege and, therefore, we do not address the city's argument under rule 508.

<sup>2</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The city received the request on October 26, 2018. You do not inform us the city was closed for any holidays. Thus, the city's fifteen-business-day deadline was November 16, 2018. However, the envelope in which you submitted the requested information bears a post meter mark of November 20, 2018. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). 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 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](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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/gw

Ref: ID# 747505

Enc. Submitted documents

c: Requestor  
(w/o enclosures)