



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2020

Ms. Marcialyn Hooper
Open Records Coordinator
Dallas Animal Services
1818 North Westmoreland Road
Dallas, Texas 75212

OR2020-31401

Dear Ms. Hooper:

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# 858786 (ORR# C006695).

The City of Dallas (the "city") received a request for information pertaining to a specified address. 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 claimed exception and reviewed the submitted information.

Initially, we must address the procedural obligations of the city under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. 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. Gov't Code § 552.301(b). The city does not inform us when it received the request for information. However, the copy of the request for information that the city submitted indicates the city received clarification of the initial request on September 18, 2020. *See id.* § 552.301(e)(1)(C); *cf. City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-

¹ We 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). Section 552.022 is not applicable to the submitted information and, therefore, we do not address the city's argument under rule 508.

broad request, ten-day period to request attorney general ruling is measured from date request is clarified). The city does not inform us it was closed on any subsequent date. Thus, the city's ten-business-day deadline to request a ruling was October 2, 2020. However, the envelope containing the request for a ruling from this office is postmarked October 8, 2020. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, the city failed to comply with the procedural requirements mandated by section 552.301.

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). Because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will address its applicability to the information at issue. However, we find the city has failed to establish a compelling reason to address the common-law informer's privilege.

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 claims the information is protected by the informer's privilege pursuant to judicial decision and cites to *Scher v. United States*, 305 U.S. 251 (1938). However, we find this case does not determine the confidentiality of any information for purposes of the Act. Therefore, 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.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/rm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)