



July 5, 2000

Mr. Thomas Shute
Assistant City Attorney
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

OR2000-2517

Dear Mr. Shute:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 136746.

The City of San Antonio (the "city") received a request for certain records of complaints made about barking dogs, including the report of one specified complaint and all reports of complaints made by three identified individuals during a designated time period. You seek to withhold both the identity of a complainant and the entire contents of other records of complaints under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

You raise section 552.101 in conjunction with the common law informer's privilege.¹ The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1988), 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. It also protects the identities of individuals 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 2 (1981), citing Wigmore, Evidence, § 2374, at 767 (McNaughton*

¹Section 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.

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 4-5 (1988). Furthermore, as its purpose is to protect the flow of information to the governmental body, rather than to protect the interests of the person who furnishes the information, the informer's privilege, unlike other claims under section 552.101 of the Government Code, can be waived. *See* Open Records Decision Nos. 630 at 4 (1994), 549 at 6 (1990).

You inform us that creating or allowing an animal nuisance, such as a barking dog, is a violation of the city code that is punishable by a fine of up to \$2,000.00. You assert that the city relies on citizens to report suspected violations of law and that the revelation of the identities of informants "will result in citizens refraining from cooperating with law enforcement and reporting the commission of crimes." You have submitted the report specified by the requestor and other reports of complaints of alleged animal nuisances during the time period in question here. You seek to withhold the identity of the individual whose complaint resulted in the report that the requestor specified. You also seek to withhold the entire contents of the other submitted reports in order to protect the identities of the complainants. With regard to those reports, you assert that, "[a]s even acknowledging that the other barking dog complaints exist . . . will automatically identify the named individual complainant(s), the City believes that all such complaints in their entirety are also exempt under section 552.101." Based on your representations, this particular request for information, and our review of the submitted reports, we agree that section 552.101, in conjunction with the common law informer's privilege, excepts from disclosure the identity of the individual whose complaint resulted in the report specified by the requestor. We also conclude that the informer's privilege protects the other submitted reports in their entireties, and therefore they also may be withheld under section 552.101.

This letter ruling is limited to the particular records 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 records or any other circumstances.

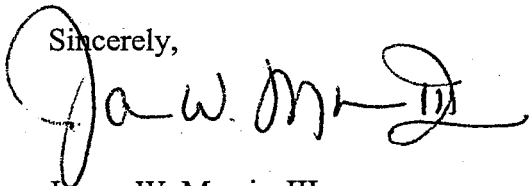
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/nc

Ref: ID# 136746

Encl. Submitted documents

cc: Angus McGinty, Lawyer - (210) 270-2965
520 Bonham Street.
San Antonio, Texas 78205
(w/o enclosures)

