



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2017

Ms. Josette Flores
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2017-04351

Dear Ms. Flores:

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# 647228 (City Ref. No. 16-1018-076).

The City of El Paso (the "city") received a request for all information related to two specified dangerous dog determinations. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information is not responsive to the present request because it does not pertain to the two specified dangerous dog determinations. This ruling does not address the public availability of the non-responsive information, which we have indicated, and the city need not release it in response to this request.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706(Tex. 1977). You state the responsive information pertains to a pending criminal prosecution in the city's municipal court. We note the

information at issue includes citations and quarantine orders. Because copies of the citations and quarantine orders were provided to the individual who was cited, we find release of this information will not interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). We therefore conclude the citations and quarantine orders may not be withheld under section 552.108(a)(1). Based on your representation and our review, we conclude the release of the remaining responsive information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

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. This section encompasses 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. 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). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. 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). We note the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. See ORD 208 at 1-2.

You seek to withhold the complainant's information in the citations and quarantine orders under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we note the subject of the complaint knows the identity of the informer in the information at issue. Accordingly, the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, the city must release the citations and quarantine orders we have marked. The city may withhold the remaining responsive information under section 552.108(a)(1) 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/sdk

Ref: ID# 647228

Enc. Submitted documents

c: Requestor
(w/o enclosures)