



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 14, 2017

Mr. Whitt L. Wyatt
Counsel for City of Allen
Nichols, Jackson, Dillard, Hager, & Smith, L.L.P.
500 North Akard Street, Suite 1800
Dallas, Texas 75201

OR2017-18459

Dear Mr. Wyatt:

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# 670663 (PIR# 86782).

The City of Allen (the "city"), which you represent, received a request for information pertaining to a specified animal. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. You raise section 552.101 in conjunction with 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, provided the subject of the information does not already know the informer's identity. *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, individuals 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).

You state the information you marked reveals the identity of a complainant who reported a possible violation of chapter 3, section 3-3 of the city's Code of Ordinances to the city's Animal Services Department, which we understand has the authority to enforce the provision of the code at issue. We also understand the alleged violation is punishable by fine, pursuant to section 3-2 of the Code of Ordinances. We have no indication the subject of the complaint knows the identity of the complainant. Based on your representations and our review, we conclude the city may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. *See* Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law). However, we find the remaining information does not identify an informer for the purposes of the informer's privilege. Accordingly, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As the city raises no other exceptions to disclosure of the remaining information, it must be released.

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,



Kaelan A. Henze
Attorney
Open Records Division

KAH/eb

Ref: ID# 670663

Enc. Submitted documents

c: Requestor
(w/o enclosures)