



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 16, 2017

Ms. Carolyn Matthis
Assistant City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 75015-2288

OR2017-26272

Dear Ms. Matthis:

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# 684381.

The City of Irving (the "city") received a request for three categories of records of the city's Animal Services Department pertaining to a specified address during a specified time period. You state the city will rely on Open Records Letter Nos. 2017-07032 (2017) and 2017-08883 (2017) and withhold or release some of the requested information in accordance with those rulings. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). You claim some of 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.

Initially, you state the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2017-21353 (2017). In that ruling, we determined the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. Accordingly, to the extent the law, facts, or circumstances on which Open Records Letter No. 2017-21353 was based have not changed,

the city may continue to rely on Open Records Letter No. 2017-21353 as a previous determination and withhold the identical information in accordance with that ruling. *See id.* To the extent the laws, facts, or circumstances have changed, the city may not rely on Open Records Letter No. 2017-21353 as a previous determination and we will address the city's argument against release of 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)*. 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 have highlighted identifies a complainant who reported a violation of a city ordinance to the city's Animal Services Department (the "department"). You explain the department is responsible for enforcing the relevant portions of the city ordinance. You state a violation of the relevant city ordinance carries civil or criminal penalties. We have no indication the subject of the complaint already knows the identity of the informer. Based upon your representations and our review, we conclude the city has demonstrated the applicability of the common-law informer's privilege to the information at issue. Therefore, the city may withhold the information you have highlighted under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, to the extent the law, facts, or circumstances on which Open Records Letter No. 2017-21353 was based have not changed, the city may continue to rely on Open Records Letter No. 2017-21353 as a previous determination and withhold the identical information in accordance with that ruling. The city may withhold the information you have highlighted under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must release the remaining 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 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/tdw

Ref: ID# 684381

Enc. Submitted documents

c: Requestor
(w/o enclosures)