



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 24, 2019

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

OR2019-10882

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# 761550 (ORR# 105484).

The Allen Police Department (the "city"), which you represent, received a request for all reports of animal-related disturbances at a specified address.¹ The department indicates it is releasing some of the requested information. The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

¹The city states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by section 826.0311 of the Health and Safety Code, which states in relevant part:

(a) Information that is contained in a municipal or county registry of dogs and cats under Section 826.031 that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the registered dog or cat is confidential and not subject to disclosure under Chapter 552, Government Code. The information contained in the registry may not include the social security number or the driver’s license number of the owner of the registered animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

Health & Safety Code § 826.0311(a), (b). Section 826.0311 applies only to the actual pet registry; it does not apply to the contents of other records, even though those documents may contain the same information as the pet registry. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection); *see also* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987).

The department states some of the submitted information, which it marked, “relates to information maintained in the [City of Allen’s (the “city’s”)] animal registry that identifies or tends to identify the owner . . . of a registered dog.” However, the department does not inform us, and we are not able to determine, whether the information at issue was obtained directly from the city’s pet registry. Accordingly, we must rule conditionally. It does not appear the exceptions found in section 826.0311(b) of the Health and Safety Code apply in this instance. Thus, to the extent the information the department marked was obtained directly from the city’s pet registry, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 826.0311(a) of the Health and Safety Code. However, to the extent the information the department marked was not obtained directly from the city’s pet registry, the information is not confidential under section 826.0311(a) of the Health and Safety Code and the department may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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.

The department states some of the remaining information, which it marked, identifies complainants or witnesses who reported possible violations of a city ordinance to the city's Animal Control Division or the department. However, the department does not explain whether a violation of the relevant city ordinance carries civil or criminal penalties. Upon review, we find the department has failed to demonstrate the applicability of the common-law informer's privilege to any of the information it marked. Accordingly, the department may not withhold any of the information under section 552.101 of the Government Code on that basis.

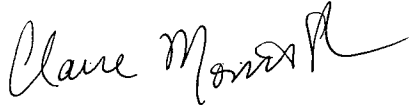
In summary, to the extent the information the department marked was obtained directly from the city's pet registry, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with section 826.0311(a) of the Health and Safety Code. The department must 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,

A handwritten signature in black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a large initial "C" and "M".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 761550

Enc. Submitted documents

c: Requestor
(w/o enclosures)