



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 2, 2019

Mr. Ryan Brooke
Deputy City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2019-18192

Dear Mr. Brooke:

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# 773254 (COL File No. 2411).

The City of Lubbock (the “city”) received a request for call logs from the Lubbock Animal Shelter relating to specified dates and times.¹ The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the instant request because it does not relate to the time periods specified in the request. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release such information in response to this request.

¹The city provides documentation showing it sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov’t Code § 552.2615. The documentation indicates the requestor modified the request in response to the cost estimate. *See id.* § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

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. The city raises 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. *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 report the violation of law 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 city states portions of the responsive information identify complainants who reported violations of the city’s animal ordinance to the city’s Animal Services Department (the “department”). The city explains the department is responsible for enforcing the relevant portions of the city ordinance. The city provides documentation showing a violation of the relevant city ordinance carries civil or criminal penalties. We have no indication the subjects of the complaints know the identities of the informers. Based upon the city’s representations and our review, we conclude the city has demonstrated the applicability of the common-law informer’s privilege to some of the information at issue. Therefore, the city may withhold the information we have indicated under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, we find the city has failed to demonstrate the remaining responsive information consists of the identifying information of individuals who made the initial report of a criminal violation to the department for purposes of the informer’s privilege. Accordingly, the city may not withhold any of the remaining responsive information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at

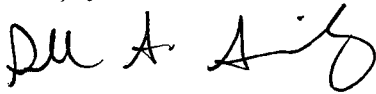
683. Upon review, we find the city has failed to demonstrate any of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Thus, the city may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city may withhold the information we have indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must release the remaining responsive 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 773254

Enc. Submitted documents

c: Requestor
(w/o enclosures)