



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 23, 2019

Ms. Marcialyn Hooper
Open Records Coordinator
Dallas Animal Services
1818 North Westmoreland Road
Dallas, Texas 75212

OR2019-30006

Dear Ms. Hooper:

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# 793087 (ORR No. C007473-081319).

The City of Dallas (the "city") received a request for all documents related to Dallas Animal Services records for a specified address during a specified date range. You state the city will release some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹ We note the city also claims the informer's privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022 of the Government Code. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *see also* Gov't Code § 552.022(a). In this instance, section 552.022 is not applicable to the information the city seeks to withhold under the informer's privilege and, therefore, we do not address the city's argument under rule 508.

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 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 state the information you marked identifies informants who reported alleged violations of section 7-3.1 of the city’s code to the city’s 3-1-1 call center. You state the complaints were referred to the animal services department, which you explain has the authority to enforce the provisions of the code at issue. You also state the alleged violation is a civil offense punishable by fine. We have no indication the subject of the complaint knows the identity of the complainants. Upon review, we find some of the information you marked is subject to the common-law informer’s privilege. However, you have failed to demonstrate the information we marked for release identifies an informer for purposes of the informer’s privilege. Thus, with the exception of the information we marked for release, the city may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.³

The city also claims portions of the remaining information are protected by the judicial decision in *Scher v. United States*, 305 U.S. 251 (1938). However, upon review, we find this case does not determine the confidentiality of any information for purposes of the Act. Therefore, we find none of the information at issue may be withheld under section 552.101 of the Government Code in conjunction with *Scher v. United States*.

In summary, with the exception of the information we marked for release, the city may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The remaining information must be released.

³ As our ruling is dispositive, we need not consider your remaining argument against disclosure of this 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Debbie Lee
Assistant Attorney General
Open Records Division

DKL/gw

Ref: ID# 793087

Enc. Submitted documents

c: Requestor
(w/o enclosures)