



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 22, 2019

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

OR2019-33166

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# 798184 (ORR C008535-091619).

The City of Dallas (the "city") received a request for information pertaining to a specified incident. You state you will release some information. You claim portions of the submitted information are 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

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

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 that 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 that those records contain substantially different types of information than that submitted to this office.

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, 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)*.

You state the informant at issue reported an alleged violation of section 7-4.14 of the city's code to the city's 3-1-1 call center. You state the complaint was referred to the animal services department, which you explain has the authority to enforce the provision 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 complainant. Upon review, we find the information we have marked is subject to the common-law informer's privilege. Thus, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.³ However, you have failed to demonstrate the remainder of the information you marked consists of the identifying information of an individual who reported a criminal violation to the city for purposes of the informer's privilege. Accordingly, the city may not withhold the remaining information you marked under section 552.101 on that basis.

The city also claims the remaining information you marked is 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, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must release the remaining information.

³ As our ruling is dispositive, we need not address 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/mo

Ref: ID# 798184

Enc. Submitted documents

c: Requestor
(w/o enclosures)