



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2020

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

OR2020-06451

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# 814957 (ORR# C011644).

The City of Dallas (the "city") received a request for information related to a specified incident. The city states it is releasing some of the requested information. The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception the city claims 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. Section 552.101 encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex.

¹ The city also claims the informer's privilege under Texas Rule of Evidence 508 for the submitted information. 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). Section 552.022 is not applicable to the information the city seeks to withhold under the informer's privilege, and thus 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.

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 city states some of the submitted information, which it marked, identifies a complainant who reported a violation of a city ordinance to the city's Department of Animal Services (the "department"). The city explains the department is responsible for enforcing the relevant portions of the city ordinance. The city also states a violation of the relevant city ordinance carries civil or criminal penalties. Based upon these 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, which we have marked. Therefore, the city may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, the city has failed to demonstrate the remainder of the information it marked consists of the identifying information of an individual who made a report of a criminal violation to the city for purposes of the informer's privilege. Accordingly, the city may not withhold the remaining information it marked under section 552.101 on that basis.

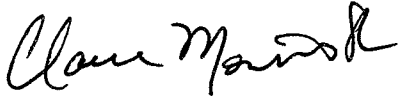
The city also claims the remaining information at issue is protected by section 552.101 of the Government Code in conjunction with the judicial decision in *Scher v. United States*, 305 U.S. 251 (1938). However, this case does not determine the confidentiality of any information for purposes of the Act. 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 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.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/rm

Ref: ID# 814957

Enc. Submitted documents

c: Requestor
(w/o enclosures)