



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 11, 2020

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

OR2020-07698

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# 816569 (C000002-010120 & C000003-010120).

The City of Dallas (the "city") received two requests from the same requestor for information pertaining to a specified address during two specified date ranges. You state the city will release some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal

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<sup>1</sup> 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.

<sup>2</sup> 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.

identification document issued by an agency of this state or another state or country is excepted from public release.<sup>3</sup> See Gov't Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.<sup>4</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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 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.

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 city's 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 identities of the complainants. Upon review, we find some of the information you marked and the information we 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, and

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<sup>3</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481, 480 (1987), 470 (1987).

<sup>4</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

the additional information we marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.<sup>5</sup>

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). We note the requestor has a right of access to her own date of birth pursuant to section 552.023 of the Government Code and this information may not be withheld from her under common-law privacy. *See Gov't Code § 552.023(a)* (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the city must withhold the date of birth not belonging to the requestor under section 552.101 of the Government Code in conjunction with common-law privacy.

The city also claims the information at issue 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 must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. With the exception of the information we marked for release, the city may withhold the information you marked, and the additional information we marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the date of birth not belonging to the requestor under section 552.101 of the Government Code in conjunction with common-law privacy. 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->

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<sup>5</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,



Katie Stallcup  
Attorney  
Open Records Division

AKS/mo

Ref: ID# 816569

Enc. Submitted documents

c: Requestor  
(w/o enclosures)