



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 14, 1997

Ms. Sara A. Fauls
Prosecutor
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR97-1583

Dear Ms. Fauls:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 107529.

The City of Plano (the "city") received an open records request through its Animal Services Division (the "division") for a complaint report pertaining to the requestor's dog. You contend the requested information is excepted from required public disclosure pursuant to section 552.108 of the Government Code and the informer's privilege, as incorporated into section 552.101 of the Government Code.¹

Because section 552.108 is the more inclusive exception to disclosure, we will discuss it first. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Although it is not apparent to this office that the division is a "law enforcement agency" for purposes of section 552.108, assuming *arguendo* that such is the case, we note that most of the information at issue consists of the same types of information specifically held to be public under *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex.

¹Although you also contend that the requested information is excepted from required public disclosure pursuant to section 552.103 of the Government Code, we note that you did not raise this particular exception within the initial ten days following the city's receipt of the open records request. See Gov't Code § 552.301. We therefore do not consider the applicability of section 552.103 to the information at issue.

1976).² Thus, the city must release the requested information, with the following exception.

You contend that section 552.101 of the Government Code, pursuant to the informer's privilege, exempts from public disclosure the identity of the individual who filed the initial complaint with the division. The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law to officials responsible for enforcing those laws. When information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision Nos. 515 (1988); 191 (1978). In *Westinghouse Electric Corporation v. City of Burlington, Vermont*, 351 F.2d 762 (D.C. Cir. 1965), the court discussed the rationale for the privilege:

The purpose of the privilege is not to protect the particular informer from retaliation, *but to protect the flow of information to the Government* [I]t rests on the assumption that a citizen, recognizing the risk of retaliation, will be more likely to inform if he knows that his identity will be kept secret. *The privilege is maintained to encourage possible informers in the future by giving them some assurance of anonymity.*

351 F.2d at 768 (emphasis added). *See also Roviario v. United States*, 353 U.S. 53, 59 (1957).

Although the privilege ordinarily applies to the efforts of law enforcement agencies, it also applies to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285, 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988), 391 (1983). We conclude that the division is, at a minimum, an administrative agency authorized to assert the protection of the informer's privilege for a complainant's identity where a violation of the animal control laws is alleged.

In this instance, it is apparent to this office that the complainant reported a perceived violation of a city ordinance or state law by alleging that the requestor's dog was behaving in a dangerous manner. The fact that the division eventually determined that the allegation was unfounded has no bearing on whether the informer's privilege is applicable.³ We

²"Front page offense report information" must be released to the public regardless of whether the information is held by a law enforcement agency or a prosecutor. *See Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Consequently, the fact that the division may have forwarded the complaint report to your office does not affect the public nature of this information.

³The requestor contends in a brief to this office that an exception to informer's privilege applies in this instance. Citing *Anderson v. State*, 817 S.W.2d 69, 71 (Tex. Crim. App. 1991) and Rule 508(c)(2) of the Texas Rules of Criminal Procedure as authority, the requestor contends that because the complainant "was the only

therefore conclude that the city may withhold all information tending to identify the complainant pursuant to the informer's privilege as incorporated into section 552.101 of the Government Code. The remaining information contained in the complaint report must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/cbh

Ref.: ID# 107529

Enclosures: Submitted documents

cc: Mr. Robert N. Rountree
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(w/o enclosures)

adverse party present at the time of the incident," the release of the complainant's identity "is essential to a fair determination of 'issues of guilt or innocence.'" Given the fact that the division determined that no violation of the law occurred, we conclude that the case law and statute cited by the requestor are not controlling in this situation.

