



January 13, 2000

Mr. Mark A. Flowers  
Assistant City Attorney  
City of Midland  
P. O. Box 1152  
Midland, Texas 79702-1152

OR2000-0148

Dear Mr. Flowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#131469.

The City of Midland (the "city") received a request for information regarding a dog-bite complaint. You claim that the information is excepted from disclosure under section 58.007 of the Family Code and section 552.108 of the Government Code. You also claim that privacy interests and the informer's privilege are implicated. You state that the "highlighted portions of Exhibit "B" are exempt from disclosure under the informer's privilege;" however, no highlighting occurs on the submitted documents. We have considered the exceptions you claim and reviewed the submitted information.

You raise section 58.007 of the Family Code, which protects from disclosure the records of juvenile offenders. The fact that the report concerns a dog biting a child does not make the report subject to section 58.007. You may not withhold the report under section 58.007.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses commonlaw privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The information submitted to this office in this case meets neither prong of the test to withhold otherwise public information under a privacy interest.

You also raise the law enforcement exception, section 552.108 of the Government Code. That section excepts from required public disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a), (b), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have not told us whether the investigation is ongoing, nor have you explained to us how releasing the requested information would interfere with law enforcement.

Section 552.108 also excepts information relating to investigations that have resulted in a conclusion other than conviction or deferred adjudication. You state that “many of the charges have not resulted in convictions or deferred adjudication,” but you do not tell us whether this particular investigation has concluded in a result other than conviction or deferred adjudication. In any case, the information submitted is basic information to which the exception provided by section 552.108 does not apply. Gov’t Code § 552.108(c). The city may not withhold the information under section 552.108.

Finally, we address your assertion of the informer’s privilege. The informer’s privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, and, by doing so, encourages individuals to cooperate with and provide information to law enforcement officials. The informer’s privilege is lost if the subject of the information already knows the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The city may withhold the name, address, and telephone number of the complainant pursuant to the informer’s privilege. We have marked the information that may be withheld.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.– Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/jc

Ref: ID#131469

Encl. Submitted documents

cc: Mr. Samuel Johnson  
1109 North Big Spring Street  
Midland, Texas 79701  
(w/o enclosures)