



May 24, 2000

Ms. Jeanine A. Cadena
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.
1717 Main Street
Dallas, Texas 75201-4335

OR2000-2063

Dear Ms. Cadena:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135548.

The City of Highland Village (the "city"), which you represent, received a request for information relating to animal control citations issued to the requestor in case number 2000-100. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that information contained in a municipal or county registry of dogs and cats which identifies or tends to identify the owner of an animal is confidential. Health & Safety Code § 826.0311(a), Gov't Code § 552.101 (excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."). In this instance, however, it does not appear that the submitted information originated from the municipal registry. Therefore, we will consider whether the exceptions you have claimed under sections 552.101 and 552.108 are applicable to the information at issue.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the requested information pertains to a pending prosecution in municipal court. Therefore, we agree that the release of the information "would interfere with the detection, investigation or prosecution of crime." See *Houston Chronicle Publ'g Co. 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. 1976) (court delineates law enforcement interests present in active cases). Thus, you may withhold from disclosure most of the submitted information.

We note, however, that “basic information about an arrested person, an arrest, or a crime” is not excepted from required public disclosure. Gov’t Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ’g Co. 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. 1976).

The city wishes to withhold the identity of the complainants and other witnesses under the informer’s privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); Open Records Decision Nos. 582 (1990), 515 (1988). The informer’s privilege does not, however, categorically protect from release the identification and description of a complainant. The identity of a complainant, whether an “informant” or not, may only be withheld upon a showing that special circumstances exist. We have addressed several special situations in which front page offense report information may be withheld from disclosure. For example, in Open Records Decision No. 366 (1983), this office agreed that the statutory predecessor to section 552.108 protected from disclosure information about an ongoing under cover narcotics operation, even though some of the information at issue was front page information contained in an arrest report. The police department explained how the release of certain details would interfere with the under cover operation which was ongoing and was expected to culminate in more arrests. Open Records Decision No. 366 (1983); *see* Open Records Decision No. 333 at 2 (1982); *cf.* Open Records Decision Nos. 393 (1983) (identifying information concerning victims of sexual assault), 339 (1982), 169 at 6-7 (1977), 123 (1976).

You explain that the identities of the witnesses and other complainants should be withheld because “citizens who report violations of laws should not be subjected to adverse action at the hands of the violator, which could possibly be the result in a situation such as this.” You have additionally provided this office with a letter from the city’s animal control officer which states that “[she] would prefer to retain the identity of any complainants, if possible, for their protection.” Based upon the information provided to this office, we do not believe that you have shown special circumstances sufficient to overcome the presumption of public access to the complainants’ identities. Consequently, the city must release all basic information to the requestor. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information, including detailed description of offense). The remaining information, however, may be withheld under section 552.108(a)(1).

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,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 135548

Encl. Submitted documents

cc: Mr. Joseph Kremborg
601 Hawthorn Circle
Highland Village, Texas 75077
(w/o enclosures)