



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 29, 2003

Ms. Sara Hartin
Assistant City Attorney
City of Killeen
101 North College
Killeen, Texas 76541

OR2003-0615

Dear Ms. Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175745.

The City of Killeen (the "city") received a request for information regarding animal control and police dispatches to the requestor's address, as well as information regarding the number of calls originating from a specified address and the identity of the caller. You state some of the responsive information has been released to the requestor. You claim that portions of the remaining responsive information are excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you have marked portions of the responsive information that you contend are protected by the informer's privilege. The informer's privilege, incorporated into the Act by section 552.101,¹ has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

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 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute or law. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). However, the informer’s privilege protects the content of the communication only to the extent that it identifies the informant. See *Roviaro v. United States*, 353 U.S. 53, 59 (1957). You advise us that the city’s animal control officers are administrative officials having a duty of inspection and of law enforcement within their particular spheres. You inform us that four citations were issued to the owner of the dogs, and that the offenses for which the citations were issued are Class C misdemeanors. In this case, the identity of informants are excepted from required public disclosure by the informer’s privilege and section 552.101. We have marked the documents accordingly.

The submitted documents also contain Texas driver’s license numbers. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The city must withhold the highlighted Texas driver’s license numbers under section 552.130 of the Government Code.

We note you have highlighted an individual’s date of birth in Exhibit F as information you seek to withhold under section 552.130. We determine that this individual’s date of birth is not information that relates to a driver’s license or motor vehicle title or registration issued by an agency of this state. Thus, the city may not withhold the highlighted date of birth under section 552.130 of the Government Code.

Finally, we address your argument under section 552.108 of the Government Code with respect to the remainder of the information you seek to withhold. Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming 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)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the responsive information relates to four pending criminal cases. Based upon this representation, we agree that the release of the remaining information you seek to withhold 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 that are present in active cases). Accordingly, we conclude the city may withhold the remainder of the information you have marked pursuant to section 552.108(a)(1).

In summary, we have marked the information that the city must withhold under section 552.101 in conjunction with the common-law informer's privilege. The highlighted Texas driver's license numbers must be withheld under section 552.130 of the Government Code. The city may withhold the remainder of the information you have marked under section 552.108 of the Government Code. As we address the information you seek to withhold in its entirety under these exceptions, we do not reach your arguments under section 552.103 of the Government Code. The remainder of the responsive information must be released to the requestor.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 175745

Enc: Submitted documents

c: Ms. Thelma A. Williams
1303 Farhills Drive
Killeen, Texas 76549
(w/o enclosures)