



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 16, 2009

Mr. Lawrence G. Provins
Assistant City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581-5416

OR2009-03402

Dear Mr. Provins:

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# 337259.

The City of Pearland (the "city") received a request for all animal control and police records pertaining to a specified address. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state both the city's Animal Control & Adoption Center ("animal control") and Police Department conducted investigations regarding a possible violation of the city's ordinance regarding animal noise nuisance. You inform us an animal control officer issued a notice of violation for the

¹We 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 that those records contain substantially different types of information than that submitted to this office.

violation of the ordinance. You explain the case was dismissed and is no longer pending in the Pearland Municipal Court. Thus, you state the requested information relates to investigations that ended in results other than convictions or deferred adjudications. Therefore, we agree section 552.108(a)(2) is applicable to the requested information.

Section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle Publishing 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). Basic information includes, among other things, the identification and description of the complainant. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Accordingly, with the exception of basic information, the city may withhold the submitted information under section 552.108(a)(2).

You claim portions of the basic information are excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The common-law informer's privilege, incorporated into the Act by section 552.101, 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). This privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided 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). It 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. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. The privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You indicate portions of the basic information reveal the identities of individuals who have reported possible violations of the city's animal noise ordinance to the officials who are charged with the duty of enforcing the ordinance at issue. We understand the violation at issue carries criminal penalties. After our review of your arguments and the submitted information, we conclude portions of the basic information contain the identity of the complainant. We find, however, a portion of the marked information does not reveal the identity of an informer and may not be withheld under the informer's privilege. Therefore, in releasing basic information, the city may, except as we have marked for release, withhold

the identity of the complainants you have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, except for basic information, the city may withhold the submitted information under section 552.108(a)(2). In releasing basic information, the city may, except as we have marked for release, withhold the identity of the complainants it has marked under section 552.101 in conjunction with the common-law informer's privilege. The remaining basic information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eb

Ref: ID# 337259

Enc. Submitted documents

c: Requestor
(w/o enclosures)