ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2009

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-13459

Dear Mr. Bounds:

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# 356215.

The City of Corpus Christi (the "city") received a request for information concerning conditions of the city animal shelters during a specified time period. You state that the city has released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor excluded from her request, among other things, e-mail addresses of members of the public. Therefore, e-mail addresses of members of the public are not responsive to the present request. The city need not release nonresponsive information in response to this request, and this ruling will not address that information.[1]

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. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas

[1]As we are able to make this determination, we need not address your argument under section 552.137 of the Government Code.

courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects 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. *See* Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978). The privilege 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." *See* 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 (1988). The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You state that the information you have marked identifies individuals who reported possible violations of the Penal Code and the city's Code of Ordinances to animal control officers of the Animal Control Division of the city's Health Department (the "division") and to the Assistant City Manager. You explain that these individuals have the authority to enforce the laws at issue. You also state that the alleged violations in question are punishable by criminal penalties. Upon review, we conclude that the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. *See* Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law). However, we note that the remaining information you have marked identifies individuals who made complaints against the division regarding employee misconduct, rather than individuals who reported violations of civil or criminal statutes. Therefore, the city may not withhold any of the remaining information under section 552.101 in conjunction with the informer's privilege.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.—El Paso 1992, writ denied), the court determined that the identities of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and that the public did not have a legitimate interest in such information. Upon review, we agree the city must withhold the

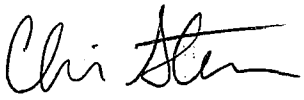
information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege and must withhold the information you have marked under section 552.101 in conjunction with common-law privacy. The remaining responsive information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 356215

Enc. Submitted documents

c: Requestor
(w/o enclosures)