



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 3, 2011

Ms. Rebecca Brewer  
Abernathy, Roeder, Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2011-01739

Dear Ms. Brewer:

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# 407959.

The City of Frisco (the "city"), which you represent, received a request for information pertaining to a specified cause number contained in either the files of the city's municipal court or Animal Control Division. You claim that the requested information is not subject to the Act and, in the alternative, 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 information.

Initially, you claim the submitted information is not subject to the Act because it is maintained by the city's municipal court and, thus, consists of records of the judiciary. Section 552.003(b) of the Government Code excludes the judiciary from the Act. Therefore, the Act neither authorizes information held by the judiciary to be withheld nor requires that it be disclosed. *See* Open Records Decision No. 25 (1974). We note, however, the request was received by the city secretary, who is the public information coordinator for the entire city. We further note the requestor requested records from the city's Animal Control Division as well as the municipal court. Accordingly, to the extent that the submitted information is maintained solely by the city's municipal court, it is not subject to release

under the Act and need not be released in response to the present request.<sup>1</sup> *See* Gov't Code § 552.0035 (access to information maintained by or for judiciary is governed by rules adopted by supreme court); Tex. R. Jud. Admin. 12 (public access to judicial records). However, to the extent the submitted information or copies of the submitted information are also maintained by the city, the submitted information is subject to the Act, and we will consider your arguments against disclosure.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 826.0211 of the Health and Safety Code, which provides in part:

(a) Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under [the Act]. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

Health & Safety Code § 826.0211(a). We note that section 826.0211 is applicable only to information contained in a rabies vaccination certificate or in a record compiled from information contained in one or more rabies vaccination certificates. You seek to withhold the entirety of the submitted information under section 826.0211. However, the submitted information does not consist of and does not contain rabies vaccination certificates. Further, you do not inform us that the information at issue was compiled from information contained in a rabies vaccination certificate. Thus, we find you have failed to establish that the submitted information is confidential under section 826.0211 of the Health and Safety Code. Therefore, the city may not withhold the submitted information under section 552.101 of the Government Code on that basis. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection); *see also* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987).

Section 552.101 also encompasses section 826.0311 of the Health and Safety Code, which states in relevant part:

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<sup>1</sup>We note that records of the judiciary may be public under other sources of law. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Loc. Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also* *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

(a) Information that is contained in a municipal or county registry of dogs and cats under Section 826.031 that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the registered dog or cat is confidential and not subject to disclosure under [the Act]. The information contained in the registry may not include the social security number or the driver's license number of the owner of the registered animal.

(b) The information may be disclosed only to a governmental entity or a person, that under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information must maintain the confidentiality of the information, may not disclose the information under [the Act], and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

Health & Safety Code § 826.0311(a), (b). Section 826.0311 only applies to the actual pet registry; it is not applicable to the contents of other records, even though those documents may contain the same information as the pet registry. *See* ORD 658 at 4 (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). The submitted information consists of information pertaining to the investigation of a code violation. You have not explained, and the submitted documents do not reflect, how the submitted information consists of the actual pet registry for the city. Thus, we find you have failed to establish any of the submitted information is contained in a municipal or county registry of dogs and cats and identifies or tends to identify the owner of a registered dog or cat. Therefore, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 826.0311 of the Health and Safety Code.

Section 552.108(a)(1) 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 . . . 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 section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide an affidavit from the city's Code Enforcement/Animal Control Administrator representing, that the submitted information relates to a code violation that has resulted in criminal charges that are pending in the city's municipal court. Based upon this representation, we conclude that release most of the information at issue 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559

(Tex. 1976). Accordingly, we conclude that section 552.108(a)(1) of the Government Code is generally applicable to the submitted information.

We note, however, the information at issue includes a copy of a citation. Because a copy of the citation was provided to the individual who was cited, we find release of the citation will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). We therefore conclude the copy of the citation we have marked may not be withheld under section 552.108(a)(1).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes the identity of the complainant and a detailed description of the offense. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The city must release basic information, including a detailed description of the offense and the identity of the complainant, even if this information does not literally appear on the front page of an offense or arrest report. Thus, with the exception of the marked citation and basic information, the city may withhold the submitted information from disclosure under section 552.108(a)(1).

You assert the identity of the complainant is subject to the common-law informer's privilege. Section 552.101 also encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *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 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. 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 contend the identity of the complainant is protected under the informer's privilege. In this instance, however, the submitted information reflects the requestor, who is the subject of the complaint, already knows the informer's identity. Consequently, you have failed to demonstrate the applicability of the informer's privilege to the complainant's identity, and this information may not be withheld under section 552.101 of the Government Code on the basis of the informer's privilege.

In summary, to the extent the submitted information is maintained solely by the city's municipal court, it is not subject to release under the Act and need not be released in response to the present request. To the extent the submitted information or copies of the submitted information are also maintained by the city, then, with the exception of the marked citation and basic information, the city may withhold the submitted information under section 552.108(a)(1) of the Government Code. The remaining information must be released.<sup>2</sup>

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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 407959

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the marked citation contains confidential information to which the requestor has a right of access pursuant to section 552.023 of the Government Code. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Thus, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.