



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2011

Ms. Kelley Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2011-08950

Dear Ms. Messer:

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# 422098.

The City of Abilene (the "city") received a request for "information about who" contacted the city concerning the requestor's horse. You claim 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 reviewed the submitted information.

Initially, as noted, the requestor limited her request to "information about who" contacted the city concerning the requestor's horse. Accordingly, we find the only information responsive to the request within the submitted document is the name and telephone number of the reporting party, and our ruling is limited to that information. The remaining submitted information is not responsive to the request, and the city need not release the remaining information to the requestor.

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 exception 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); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's 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). The informer's 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." Open Records Decision No. 279 at 2 (1981). 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.

You state the submitted information reveals the identity of a complainant who made a report to the city's animal services department concerning a starving horse. However, you have not identified any specific law alleged to have been violated, nor have you explained whether any alleged violation carries civil or criminal penalties. Accordingly, the city has failed to demonstrate that the informer's privilege is applicable to any of the submitted information. Thus, we conclude that the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the informer's privilege.

You also argue that the requested information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. See Open Records Decision Nos. 493 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. Open Records Decision No. 199 (1978). An agency that does not qualify as a law enforcement agency may, under certain limited circumstances, claim that section 552.108 protects records in its possession. See, e.g., Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493, 272 (1981). If an administrative agency's investigation reveals possible criminal conduct that the administrative agency intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the administrative agency if its release would interfere with law enforcement. See Gov't Code 552.108(a)(1); Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493, 272. In this instance, you have neither explained to this office how the city's animal services department is a law enforcement agency for purposes of section 552.108, nor demonstrated to us that the information at issue has been forwarded to an appropriate law enforcement agency. Therefore, we have no basis for ruling that the requested information may be withheld under section 552.108(a)(2). As you raise no other arguments against disclosure, the requested 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/bs

Ref: ID# 422098

Enc. Submitted documents

c: Requestor
(w/o enclosures)