



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2013

Ms. Josette Flores
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2013-01745

Dear Ms. Flores:

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# 477844.

The City of El Paso (the "city") received a request for records regarding four specified dogs. You state you are releasing some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note most of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2013-00904 (2013). In that ruling, we held the city may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege, and the remaining information must be released. As we have no indication the law, facts, or circumstances upon which the prior ruling was based have changed, the city must continue to rely on Open Records Letter No. 2013-00904 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances upon which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will address your arguments

under section 552.101 for the remaining information not encompassed by Open Records Letter No. 2013-00904.

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. You raise section 552.101 in conjunction with the common-law informer’s privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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. *See Open Records Decision No. 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 1-2 (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 (1988). However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer’s privilege. The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. *Open Records Decision No. 549* at 5 (1990).

You state the remaining information reveals the identities of complainants who reported possible violations of section 7.08.030 of the El Paso City Code. You explain, and provide documentation representing, violations of Title 7 of the El Paso City Code are misdemeanors punishable by a fine. You state there is no indication the requestor knows the identities of the complainants. However, upon review, we find no portion of the remaining information identifies an informer for the purposes of the common-law informer’s privilege, and the city may not withhold any of the remaining information on that basis.

In summary, the city must continue to rely on Open Records Letter No. 2013-00904 as a previous determination and withhold or release the information at issue in accordance with that ruling. The city must release the remaining information.

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,

A handwritten signature in cursive script, appearing to read "Kristi L. Wilkins".

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 477844

Enc. Submitted documents

c: Requestor
(w/o enclosures)