



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2014

Ms. Rachel L. Lindsay
Counsel for the Town of Flower Mound
Brown & Hofmesiter, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2014-01823

Dear Ms. Lindsay:

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# 512516.

The Town of Flower Mound (the "town"), which you represent, received a request for animal control citations and calls or complaints originating from or pertaining to specified addresses for a specified date range. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it does not pertain to the addresses specified by the requestor. This ruling does not address the public availability of any information that is not responsive to the request and the town is not required to release such information in response to this request.

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. Section 552.101 of the Government Code encompasses 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 Chapter 552, Government Code. 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 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. Exhibit D includes rabies vaccination certificates. Therefore, the owners' identifying information within the rabies certificates, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. However, you do not inform us the remaining information at issue was compiled from information contained in a rabies vaccination certificate. Thus, we find you have failed to establish the remaining information is confidential under section 826.0211 of the Health and Safety Code. Therefore, the town may not withhold the remaining information at issue 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 of the Government Code 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); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The 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 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) (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.

You state the information in Exhibit B reveals the identities of complainants who reported possible violations of the town's code of ordinances (the "code") to the town's animal control officers and the town's police department. We understand the town's animal control officers and the town's police department are responsible for enforcing the code. You state violations of the ordinances at issue are punishable as Class C misdemeanors. You do not

indicate, nor does it appear, the subject of the complaints knows the identities of the complainants. Therefore, we conclude the town may withhold the information we 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 find none of the remaining information identifies an individual for the purposes of the informer's privilege; thus, none of the remaining information may be withheld under section 552.101 on this basis.

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(a)(1) 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 Exhibit E pertains to an open and pending criminal case. We note, however, the information in Exhibit E includes a notice to appear. Because this information was provided to the individual who was issued the notice, we find release of this information, which we have marked, will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). We therefore conclude the information we have marked for release may not be withheld under section 552.108(a)(1). However, based on your representation, we conclude the release of the remaining information 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). Thus, section 552.108(a)(1) is applicable to the remaining information in Exhibit E.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit F pertains to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Based on this representation and our review, we agree section 552.108(a)(2) is applicable to Exhibit F.

However, we note, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open

Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the notice to appear and basic information, the town may withhold the remaining information in Exhibit E under section 552.108(a)(1) of the Government Code and Exhibit F under section 552.108(a)(2) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See Gov't Code § 552.130*. We note the requestor has a right of access to her own driver's license information pursuant to section 552.023 of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the town must withhold the motor vehicle record information we marked in Exhibit C under section 552.130 of the Government Code. However, we find none of the remaining information constitutes motor vehicle record information and may not be withheld under section 552.130 of the Government Code.¹

In summary, the town must withhold the information we marked in Exhibit D under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. The town may withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. With the exception of the notice to appear and basic information, the town may withhold the remaining information in Exhibit E under section 552.108(a)(1) of the Government Code and Exhibit F under section 552.108(a)(2) of the Government Code. The town must withhold the motor vehicle record information we marked in Exhibit C under section 552.130 of the Government Code. The remaining 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.

¹We note the requestor in this case has a right of access to information that would otherwise be confidential with respect to the general public. *See Gov't Code § 552.023(a)*; Open Records Decision No. 481 at 4(1987). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code § 552.130(c)*. If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Accordingly, if the town receives another request for this same information from a person who does not have such a right of access, section 552.130(c) authorizes the town to redact the requestor's motor vehicle record information without the necessity of requesting a decision under the Act.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 512516

Enc. Submitted documents

c: Requestor
(w/o enclosures)

