



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2014

Ms. L. Carolyn Nivens
Paralegal
Ross, Banks, May, Cron, & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056

OR2014-23105

Dear Ms. Nivens:

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# 548600 (Ref. No. 3607-1).

The City of League City (the "city"), which you represent, received a request for animal control complaints at a specified address. You state you will release some information. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 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. We note the privilege is not intended to protect the identities of public officials and employees who have a duty to report violations of the law. Because a public employee acts within the scope of his employment when filing a complaint, the informer’s privilege does not protect the public employee’s identity. Cf. *United States v. St. Regis Paper Co.*, 328 F. Supp. 660,665 (W.D. Wis. 1971) (concluding public officer may not claim informer’s reward for service it is his or her official duty to perform).

You inform us the submitted information reveals the identities of complainants who reported to the animal control division of the city’s police department possible violations of the city’s ordinances regarding animals running at large, animal cruelty, injured animals, and smell of animal waste within the city limits. You explain the animal control division is responsible for the enforcement of the city’s ordinances and state laws pertaining to animals and fowl. Further, you explain violations of these ordinances are misdemeanors and punishable by fine. You inform us the subject of the complaints does not know the identities of the complainants at issue. Based on your representations and our review, we find most of the information you have marked reveals the identities of informers for purposes of the informer’s privilege. However, we find the remaining information at issue, which we have marked for release, pertains to a public employee who has a duty to report violations of the law. Therefore, we find you have failed to demonstrate the applicability of the common-law informer’s privilege to the information we have marked for release and may not withhold it under section 552.101 of the Government Code on that basis. Accordingly we conclude, with the exception of the information we have marked for release, the city may withhold the identifying information you have marked under section 552.101 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).

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. You have marked vehicle identification numbers. We note section 552.130 protects personal privacy. In this instance, you inform us the requestor may be the owner of the vehicles at issue. If the requestor owns the vehicles at issue, the requestor has a right of access to the marked vehicle identification numbers under section 552.023 of the Government Code, and the city may not withhold them on the basis of section 552.130. See generally Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely 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). If the requestor does not own the vehicles at issue, the city must withhold the marked vehicle identification numbers under section 552.130 of the Government Code.

In summary, with the exception of the information we have marked for release, the city may withhold the identifying information you have marked under section 552.101 in conjunction with the common-law informer's privilege. The city must withhold the vehicle identification numbers you have marked under section 552.130 of the Government Code if the requestor does not own the vehicles at issue. 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.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 548600

Enc. Submitted documents

c: Requestor
(w/o enclosures)