OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

March 16, 1999

Mr. David Daugherty
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR99-0741

Dear Mr. Daugherty:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122758.

The Harris County Rabies/Animal Control Office (the "county") received an open records request for "all records of animal pick-up" at a specified address within a particular time period. You contend that some of the information at issue may be withheld from the public pursuant to the informer's privilege as incorporated into section 552.101 of the Government Code.

Before we address the applicability of the informer's privilege to the records at issue, we first address the threshold issue that you raise: whether the open records request is valid because it was made anonymously with only a post office box as a street address. You state that because the identity of the requestor is unknown, "it is possible the requestor is an individual who is imprisoned or confined in a correctional facility and would therefore not be entitled to have any of the request accepted or complied with," apparently raising section 552.028 of the Government Code. You have not, however, established that such is the case in this instance. Absent such a demonstration, we conclude that the county may not refuse the open records request pursuant to section 552.028. *See also* Gov't Code § 552.223 (requiring uniform treatment of open records requests). Based on the above, we do not believe that the county may refuse to honor an open records request merely because the request was made anonymously.

We now address whether any of the information at issue may be withheld pursuant to the informer's privilege. The "informer's privilege" aspect of section 552.101 protects the identity of persons who report violations of the law. Although the privilege ordinarily

applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285 (1981), 279 (1981); *see also* Open Records Decision No. 208 (1978). This may include enforcement of quasi-criminal civil laws. Open Records Decision Nos. 515 (1988), 391 (1983). The privilege does not, however, protect the contents of communications if they do not reveal the identity of the informant. *Roviaro v. United States*, 353 U.S. at 60. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the individual who is the subject of the complaint. *See* Open Records Decision No. 208 (1978). This office has previously concluded that the identity of an individual who files an animal-related complaint with the county is protected under the informer's privilege. *See* Open Records Letter No. 96-0648 (1996).

You have submitted to this office a redacted and non-redacted set of documents that you state are a representative sample of the requested records. You have not explained, nor is it apparent to this office, how most of the information you have redacted comes within the informer's privilege. We have marked in brackets the information that reveals or might tend to reveal the identity of the informant and therefore may be withheld pursuant to section 552.101. The county must release the remaining information to the requestor.[1]

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/ch

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[1]In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Ref.: ID# 122758

Enclosures: Marked documents

cc: P.O. Box 202
Magnolia, Texas 77353
(w/o enclosures)