



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2004

Mr. Gordon Hikel
Attorney at Law
Brown & Hofmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2004-7909

Dear Mr. Hikel:

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# 209371.

The Town of Flower Mound (the "town"), which you represent, received a request for "calls received for police action or animal control action over the last 6 months" at a specified address. You claim that some of the requested 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.

We begin by noting that some of the submitted documents are not responsive to the instant request for information, as they were created outside of the requested time period. This ruling does not address the public availability of any information that is not responsive to the request, and the town need not release that information in response to this request.¹ See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd).

You assert that information identifying persons who made complaints about the requestor's dog may be withheld pursuant to the common law informer's privilege. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses

¹Thus, we do not address your argument under chapter 772 of the Health and Safety Code.

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 a governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. *See 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 *Wigmore, Evidence*, § 2374, at 767 (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 (1988)*. The privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*.

You assert that some of the submitted information should be withheld to protect the identities of individuals who reported violations of a particular town ordinance to the department charged with enforcing the ordinance. You further inform us that violation of the ordinance carries a civil penalty. Thus, we conclude that the identities of the persons making the reports, which we have marked, are excepted from disclosure under section 552.101 in conjunction with the informer's privilege.

Section 552.101 also encompasses information that another statute makes confidential. Section 826.0311 of the Health and Safety Code provides that:

[i]nformation that is contained *in a* municipal or county *registry* of dogs and cats under Section 826.031 that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the registered dog or cat is confidential and not subject to disclosure under Chapter 552, Government Code.

Health & Safety Code § 826.0311(a) (emphasis added). Section 826.0311 makes only the pet registry itself confidential. Section 826.0311 is not applicable to the contents of other records, even though those documents contain the same information as the pet registry. *See Open Records Decision No. 478 at 2 (1987)* (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public).

You contend that "[s]ome of the documents in Exhibit B consist of information that if released will reveal the names of those who have Pets registered with the Town." You do not inform us that any of the submitted information comes from the registry itself. Because the submitted information is not from the pet registry itself, it is not confidential under

section 826.0311, and none of it may be withheld under section 552.101 on this basis. *See also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure).

In summary, the identities of the persons making the reports are excepted from disclosure under section 552.101 in conjunction with the informer's privilege. The remaining submitted information must be released to the requestor.²

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

²Some of the documents marked for release contain or consist of confidential information that is not subject to release to the general public. *See* Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the town receives a future request for this information from an individual other than the requestor or his authorized representative, the town should again seek our decision.

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 209371

Enc. Submitted documents

c: Mr. John Cashman
3100 Sheryl Drive
Flower Mound, Texas 75062
(w/o enclosures)