ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2009

Mr. Mark G. Mann
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2009-03908

Dear Mr. Mann:

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# 338099 (your ID# GCA09-0013).

The City of Garland (the "city") received a request for information pertaining to individuals who complained about the requestor's dog on three specified dates. You state you have released responsive "Activity Cards" and responsive "Officer's Log Sheets" to the requestor. You claim that portions of the submitted Animal Services Department telephone log are 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 that the requestor seeks complainant information regarding three separate incidents that occurred on three specified dates. However, you have only submitted a telephone log pertaining to one date for our review. Therefore, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note that, in his request, the requestor specified the date, time, and nature of the complaint regarding each incident at issue. Upon review, we find that only one item from

the submitted telephone log matches the requestor's description and is responsive to the present request for information. Thus, the remaining items from the submitted telephone log, which we marked, are not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the department need not release that information in response to this request.

We now address your arguments against disclosure of the information at issue. 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 section encompasses 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 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 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 2 (1981). 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. However, the informer's privilege protects the content of the communication only to the extent it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

You state that the information you marked within the submitted telephone log reveals the identity of a complainant who reported a possible violation of a city animal control ordinance. You state that a violation of the ordinance provision in question is a criminal offense. Based on your representations, we conclude the city may withhold the responsive information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining responsive 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.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 at (512) 475-2497.

Sincerely,

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 338099

Enc. Submitted documents

c: Requestor
(w/o enclosures)