



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2009

Ms. Kelley Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2009-04232

Dear Ms. Messer:

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# 338643.

The City of Abilene (the "city") received a request for all "complaints, citations, violations, and phone calls" pertaining to barking dogs at a specified address. You claim the submitted complaint information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information does not pertain to a complaint of barking dogs, as specified in the request. Thus, this information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

You claim the submitted responsive complaint information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(1) 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 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 the submitted complaint information relates to a pending criminal investigation. Based on this representation and our review, we conclude the release of this 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), *writ-ref'd-n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, and includes the identity of the complainant and a detailed description of the offense. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (summarizing types of information considered to be basic information). You claim, however, the complainant's identifying information must be withheld under section 552.101 of the Government Code in conjunction with 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." 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 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.

You state the submitted complaint information reveals the identity of a complainant who reported possible criminal violations to the city's animal services department. You explain the city "prosecutes noise that rises to the level of nuisance, including barking dogs, as . . . class 'C' misdemeanors." You do not indicate, nor does it appear, the subject of the complaint knows the identity of the complainant. Based on your representation and our review, we conclude the city may withhold the complainant's identifying information from the basic information 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

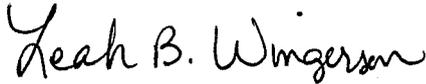
is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law).

In summary, with the exception of basic information, the city may withhold the submitted responsive complaint information under section 552.108(a)(1) of the Government Code. In releasing the basic information, the city may withhold the complainant's identifying information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 338643

Enc. Submitted documents

c: Requestor
(w/o enclosures)