



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2013

Ms. Michele Tapia
Assistant City Attorney
City of Carrollton
1945 East Jackson Road
Carrollton, Texas 75006

OR2013-01099

Dear Ms. Tapia:

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# 476537 (City ID No. ES-177).

The City of Carrollton (the "city") received a request for information related to dog bite reports during a specified time period. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code and privileged under rule 508 of the Texas Rules of Evidence. We have considered your claims and reviewed the submitted representative sample of information.¹

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

¹We 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 Nos. 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.

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) (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.

You assert the submitted records contain personally identifying information of individuals who reported violations of city ordinances to city code enforcement officers. You have identified the specific laws alleged to have been violated. However, you have not explained whether any alleged violation carries civil or criminal penalties. Accordingly, the city has failed to demonstrate that the informer's privilege is applicable to any of the information at issue. Thus, we conclude the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with the informer's privilege.

You also claim the informer's privilege under Texas Rule of Evidence 508.² The Texas Supreme Court has held the Texas Rules of Evidence are "other law" for purposes of section 552.022 of the Government Code. See *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); see also Gov't Code § 552.022(a). However, section 552.022 is not applicable to the information you seek to withhold under the informer's privilege, and we do not address your argument under rule 508.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). The city must withhold the marked driver's license numbers under section 552.130 of the Government Code. 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.oag.state.tx.us/open/index_orl.php,

²This office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

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, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 476537

Enc. Submitted documents

c: Requestor
(w/o enclosures)