



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2013

Ms. Michelle M. Kretz
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2013-02918

Dear Ms. Kretz:

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# 479292 (City of Fort Worth PIR No. W021619).

The City of Fort Worth's Animal Care and Control Center (the "city") received a request for the first and last name, gender, and address of dog bite victims and the date of each incident for a specified period of time. You state some information will be released to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we note the requestor only seeks the name, gender, and address of dog bite victims and the dates of the incidents. We note the information you seek to withhold contains

¹We note you also claim the informer's privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning 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). In this instance, section 552.022 is not applicable to the information you seek to withhold under the informer's privilege and, therefore, we do not address your argument under rule 508.

²We assume 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.

information beyond the categories that were requested. Thus, the portions of the information that does not consist of the victim's names, genders, and addresses and the dates of the incidents are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release that information in response to the request.³

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. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects 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. *See Open Records Decision Nos. 515 at 3 (1998), 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 (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 the informer's statement only to the extent necessary to protect the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*.

You state the information you have marked reveals the identity of complainants who made reports of possible city code violations to city staff members charged with the enforcement of the city code, and where code enforcement officers were not available, the city police department. However, you have not identified any specific code alleged to have been violated, nor have you explained whether the alleged violations carry civil or criminal penalties. Accordingly, the city has failed to demonstrate the informer's privilege is applicable to the responsive information. Thus, we conclude the city may not withhold the responsive information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As no further exception to disclosure is raised for the responsive information, it 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.

³As our ruling is dispositive, we need not address your arguments against disclosure of this information.

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, toll free at (888) 672-6787.

Sincerely,



Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/dls

Ref: ID# 479292

Enc. Submitted documents

c: Requestor
(w/o enclosures)