



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 3, 2014

Ms. L. Carolyn Nivens  
Paralegal for the City of League City  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056

OR2014-02007

Dear Ms. Nivens:

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# 512817 (RBMCC File No. 3607-1; City Ref. No. 13-465).

The City of League City (the "city"), which you represent, received a request for information regarding the removal of a specified dog from the city, including: (1) all information, reports, and records pertaining to the raid of a specified animal clinic; (2) copies of certain regulations, laws, and ordinances; (3) the name and telephone number of city employees who joined the raid; and (4) address of all agents who participated in the raid. You inform us the city does not have some of the requested information.<sup>1</sup> You also inform us the city will release some of the requested information to the requestor, and will redact driver's license information in accordance with section 552.130(c) of the Government Code.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. Open Records Decision No. 199 (1978). You inform us the report in Exhibit A is an animal bite investigation report created by the city's Animal Control Unit, which, you explain, is a division of the city's police department.

A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the submitted reports in Exhibits A and B pertain to cases that are closed and did not result in an arrest, conviction, or deferred adjudication. Thus, you inform us, the submitted reports pertain to cases that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to these reports.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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). We note basic information includes, among other things, an identification and description of the complainant. *See* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). Thus, with the exception of the basic information, you may withhold Exhibits A and B from disclosure based on section 552.108(a)(2) of the Government Code.<sup>3</sup>

You seek to withhold the informer's identifying information from basic information under the common-law informer's privilege, which is encompassed by section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. 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.*

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

*State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The 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 seek to withhold the information you have marked under the common-law informer's privilege. You inform us the report in Exhibit B pertains to an allegation of animal cruelty reported to the city's police department. We note there is no indication the subject of the complaint knows the identity of the complainant. Therefore, based on your representation and our review, we conclude that in releasing basic information from the report in Exhibit B, the city may withhold the complainant's identifying information, which you have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you do not indicate, nor does the submitted information reflect, the complainant at issue in Exhibit A alleged a violation of criminal or civil law. We therefore conclude you have not demonstrated this complainant's identity is protected by 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). Accordingly, it may not be withheld on this basis.

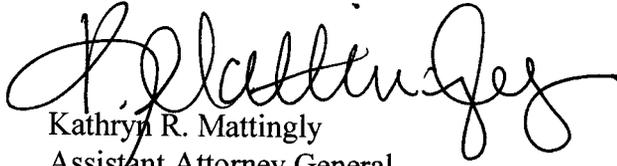
In summary, with the exception of the basic information, the city may withhold Exhibits A and B from disclosure based on section 552.108(a)(2) of the Government Code. In releasing basic information from the report in Exhibit B, the city may withhold the complainant's identifying information you have marked 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Mattingly', written in a cursive style.

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 512817

Enc. Submitted documents

c: Requestor  
(w/o enclosures)