



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 13, 2015

Ms. Josette Flores  
Assistant City Attorney  
City of El Paso  
Office of the City Attorney  
P.O. Box 1890  
El Paso, Texas 79950-1890

OR2015-09338

Dear Ms. Flores:

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# 568978.

The City of El Paso (the "city") received a request for the name of the animal control officer who seized the requestor's dog on a specified date. You claim some of the submitted information is 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 the requestor only seeks the name of the animal control officer who seized the requestor's dog. Accordingly, any other information is not responsive to the request for information. This ruling does not address the public availability of non-responsive information, and the city need not release it to the requestor.

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. Section 552.101 encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identity of a person who has reported 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 No. 208 at 1-2 (1978)*. The informer's

privilege protects the identity of an individual who has reported violations of statutes to the police or similar law-enforcement agencies, as well as an individual who has reported 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 1-2 (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 (1988).

You seek to withhold the responsive information under the common-law informer’s privilege. We note, however, the purpose of the privilege is to encourage “citizens” to report wrongful behavior to the appropriate officials. See *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The privilege is not intended to protect the identities of public officials who have a duty to report violations of the law. In this case, the information at issue pertains to a city animal control officer. Because this public employee was acting within the scope of his employment, the informer’s privilege does not protect his identity. Cf. *United States v. St. Regis Paper Co.*, 328 F. Supp. 660, 665 (W.D. Wis. 1971) (concluding that public officer may not claim informer’s reward for service it is his or her official duty to perform). Accordingly, the city may not withhold the information at issue under section 552.101 of the Government Code in conjunction with the informer’s privilege. As you raise no other exceptions to disclosure, the city must release the responsive information to the requestor.

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,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLG/cz

Ref: ID# 568978

Enc. Submitted documents

c: Requestor  
(w/o enclosures)