



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2015

Ms. Stacie S. White
Counsel for the Town of Flower Mound
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2015-10710

Dear Ms. White:

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# 565446.

The Town of Flower Mound (the "town"), which you represent, received a request for all animal services complaints from a specified time period pertaining to multiple specified addresses.¹ You state the town will redact certain information pursuant to Open Record Decision No. 684 (2009), motor vehicle record information pursuant to section 552.130(c) of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.² You claim the submitted information is excepted from disclosure under

¹We note the town sought and received clarification of this request from the requestor. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision. *See* ORD 684. 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(a), (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). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.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. Section 552.101 encompasses information protected by other statutes, such as section 826.0211 of the Health and Safety Code, which provides, in part:

(a) Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under [the Act]. The information contained in the certificate or record may not include the social security number or the driver’s license number of the owner of the vaccinated animal.

Health & Safety Code § 826.0211(a). Section 826.0211 applies only to information contained in a rabies vaccination certificate or in a record compiled from information contained in one or more rabies vaccination certificates. The submitted information contains a rabies vaccination certificate. We find the information we have marked identifies or tends to identify the owners of a vaccinated animal or consists of an address, telephone number, or other personally identifying information of the owners of a vaccinated animal. Accordingly, we conclude the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. However, we find you have failed to demonstrate any of the remaining information is confidential under section 826.0211 of the Health and Safety Code. Therefore, the town may not withhold any of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 826.0311 of the Health and Safety Code, which states, in relevant part:

(a) Information that is contained in a municipal or county registry of dogs and cats under Section 826.031 that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the registered dog or cat is confidential and not subject to disclosure under [the Act]. The information contained in the registry may not include

³We 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 those records contain substantially different types of information than that submitted to this office.

the social security number or the driver's license number of the owner of the registered animal.

(b) The information may be disclosed only to a governmental entity or a person, that under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information must maintain the confidentiality of the information, may not disclose the information under [the Act], and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

Id. § 826.0311(a), (b). Section 826.0311 only applies to the actual pet registry; it is not applicable to the contents of other records, even though those documents may contain the same information as the pet registry. *See* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure). In this instance, you have not explained, and the submitted documents do not reflect, how the remaining information consists of the actual pet registry for the town. Thus, we find you have failed to establish any of the remaining information is contained in a municipal or county registry of dogs and cats and identifies or tends to identify the owner of a registered dog or cat. Therefore, the town may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 826.0311 of the Health and Safety Code.

Section 552.108(a)(1) of the Government Code 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). Section 552.108 applies to information held by a “law enforcement agency.” *See id.* In this instance, we understand the town’s Animal Services division is a law enforcement agency for purposes of section 552.108. A governmental body claiming section 552.108(a)(1) 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 information you have indicated relates to incidents for which investigation or prosecution is currently pending. We note, however, the information at issue contains notices of code violations and notices to appear. Because a copy of these notices were provided to the subject, we find you have failed to demonstrate the release of this information will interfere with the detection, investigation, or prosecution of crime. Thus, the town may not withhold the notices of code violations and notices to appear, which we have marked, under section 552.108(a)(1). However, based on your representation and our review, we find the release of the remaining information at issue 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find section 552.108(a)(1) is applicable to the remaining information at issue.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, an identification and description of the complainant. See *id.* Thus, with the exception of the notices of code violations and notices to appear, the town may withhold the information you have indicated under section 552.108(a)(1) of the Government Code.

We understand you seek to withhold the identifying information of the complainant in the basic information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. This section 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 the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided that the subject of the report does not already know their identities. Open Records Decision Nos. 515 at 2-3 (1988), 434 at 1-2 (1986), 208 at 1-2 (1978). For the informer's privilege to apply, the report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at (1990), 515 at 3-4. The privilege affords protection to individuals who report violations of statutes to criminal 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 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)).

You state some of the basic information identifies an informer who reported a potential violation of a town ordinance, which carries a civil penalty. You do not indicate, nor does it otherwise appear, the subject of the complaint knows the identity of the informer. Based on your representations and our review, we find the town may withhold the identifying information of the complainant in the basic information, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

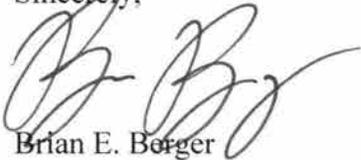
In summary, the town must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 826.0211 of the Health and Safety Code. With the exception of the marked notices of code violations and notices to appear and basic information, the town may withhold the information you have indicated under

section 552.108(a)(1) of the Government Code. In releasing basic information, the town may withhold the identifying information of the complainant, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The remaining information must be released.⁴

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, 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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/dls

Ref: ID# 565446

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Pursuant to section 552.023 of the Government Code, the requestor has a special right of access to his motor vehicle record information being released. *See* Gov't Code § 552.023. If the town receives a request for this information from a different requestor, the town is authorized to redact this information under section 552.130(c) without the necessity of seeking a decision from the attorney general. *See id.* § 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).