



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2016

Ms. Katie Leininger
Assistant City Attorney
City of Pearland
3519 Liberty drive
Pearland, Texas 77581

OR2016-16309

Dear Ms. Leininger:

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# 619797.

The City of Pearland (the "city") received a request for dog complaints at a specified address for the last fifteen years. The city claims the information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the city's claimed exceptions to disclosure and have reviewed the submitted representative sample of information.¹

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why 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). The city explains the requested information relates to a prosecution for animal noise nuisance pending in the municipal court. We note, however, the information includes a Correction Notice, which was provided

¹We assume the "representative sample" of records the city 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.

to the offender. The city has not explained how releasing information that has been provided to the offender would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Accordingly, the city may not withhold the Correction Notice under section 552.108(a)(1). Based on the city's representation and our review of the records, we agree the city has demonstrated the applicability of section 552.108(a)(1). *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases).

However, 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). The city asserts it has not released basic information because the information at issue does not consist of police offense reports. The court of appeals rejected this argument and held subsection (c)'s text does not limit "basic information" to only offense and arrest reports, and the content of the information, not the location of the information, is determinative. *City of Carrollton v. Paxton*, No. 03-13-00571-CV, 2016 WL 1305196, at *8 (Tex. App.—Austin March 31, 2016, no pet. h.) (mem. op.). Thus, the city must release the basic information from the documents at issue. Basic information refers to the information held to be public in *Houston Chronicle*. 531 S.W.2d at 186-187; Open Records Decision No. 127 (1976). The complainant's identification is considered basic information not excepted from disclosure by section 552.108.

The city claims the complainants' identification is protected by the common-law informer's privilege pursuant to 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. Section 552.101 encompasses 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). This 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 that 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). It 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* WIGMORE, EVIDENCE, § 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 an informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

The city states the complainants reported violations of the city's ordinances, and the city has issued citations for the violations. We conclude the city may withhold the complainants'

identifying information the city has marked under section 552.101 in conjunction with the 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).

In summary, with the exception of the Correction Notice and basic information, the city may withhold the information under section 552.108(a)(1) of the Government Code.² In releasing the Correction Notice and basic information, the city may withhold the complainants' identifying information the city has marked under section 552.101 in conjunction with the 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, 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 619797

Enc: Marked documents

c: Requestor
(w/o enclosures)

²Because section 552.108(a)(1) is dispositive, we do not address the city's remaining argument.