



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 21, 2016

Mr. Michael Bostic
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2016-21316

Dear Mr. Bostic:

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# 627034.

The City of Dallas (the "city") received a request for information pertaining to a specified complaint filed by a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹You also raise the informer's privilege under Texas Rule of Evidence 508. The Texas Supreme Court has held that "[t]he Texas Rules of Civil Procedure and 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). In this instance, however, section 552.022 is not applicable. Therefore, we will address your arguments under the common-law informer's privilege.

²We assume that 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.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses the informer’s privilege, which has long been recognized by Texas courts. *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 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. See Open Records Decision No. 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 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). However, the informer’s privilege does not apply where the informant’s identity is known to the individual who is the subject of the complaint. See Open Records Decision No. 208 (1978).

In this instance, the submitted documents reveal the requestor is a representative of the apartment complex which is the subject of the complaints. The submitted documents further reveal the requestor knows the identity of the complainant at issue. Therefore, the city may not withhold any of the submitted information under section 552.101 on the basis of the informer’s privilege. See *id.*

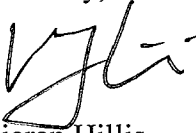
Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov’t Code § 552.137(a)-(c). The e-mail address you marked is not of the type specifically excluded by section 552.137(c). See *id.* § 552.137(c). Accordingly, the city must withhold the e-mail address you marked under section 552.137(a), unless the owner of the e-mail address affirmatively consents to its release.

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,

A handwritten signature in black ink, appearing to read 'KH', is written over the word 'Sincerely,'.

Kieran Hillis
Assistant Attorney General
Open Records Division

KH/akg

Ref: ID# 627034

Enc. Submitted documents

c: Requestor
(w/o enclosures)