



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2017

Mr. David T. Ritter
Counsel for the City of McKinney
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2017-00221

Dear Mr. Ritter:

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# 640362 (CoM ID# G1914).

The City of McKinney (the "city"), which you represent, received a request for the identity of a specified individual. You claim 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 identity of the specified individual. Thus, the submitted information that does not identify the specified individual, including the information you marked as not responsive, is not responsive to the present request. This ruling does not address the public availability of the 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. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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. *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, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer’s privilege. The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. Open Records Decision No. 549 at 5 (1990). We note 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* ORD 208 at 1-2.

You contend the responsive information identifies a complainant who reported a violation of city ordinances to the city’s animal control department (the “department”). You explain the department is responsible for enforcing the relevant portions of the city ordinance. However, you do not inform us, and we are unable to determine, whether the alleged violations at issue carry civil or criminal penalties. Therefore, we find the city has failed to demonstrate the applicability of the common-law informer’s privilege to any portion of the responsive information. Consequently, the city may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. As you have not claimed any other exceptions to disclosure, the city must release the responsive information.

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/som

Ref: ID# 640362

Enc. Submitted documents

c: Requestor
(w/o enclosures)