



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 18, 2017

Mr. Neal Falgoust
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2017-08133

Dear Mr. Falgoust:

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# 658521 (PIR# 32489).

The City of Austin (the "city") received a request for information pertaining to the requestor.¹ The city states it will release some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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. *Aguiar 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

¹The city sought and received clarification of the information requested. *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).


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). 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).

The city states the submitted information contains identifying information of a complainant who reported a possible violation of criminal statutes to the Office of the City Auditor (the “city auditor’s office”). The city acknowledges the city auditor’s office is not a law enforcement agency. Nevertheless, the city explains the city auditor’s office is the office that receives complaints of alleged wrongdoing by city employees, and it forwards complaints of this nature to the appropriate investigative body. Upon review, we conclude the city has established the applicability of the informer’s privilege to the information it has marked. Therefore, the city may withhold the information it has marked under section 552.101 of the Government Code in conjunction with the informer’s privilege.² The city must release the remaining 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

²As our ruling is dispositive, we do not address the other argument of the city to withhold this information.

Ref: ID# 658521

Enc. Submitted documents

c: Requestor
(w/o enclosures)