



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 28, 2017

Mr. Zachary Brown
Assistant City Attorney
City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767-1088

OR2017-16993

Dear Mr. Brown:

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# 668464 (PIR# 34349).

The City of Austin (the "city") received a request for information pertaining to calls made to 311 regarding a specified property and calls made from specified telephone numbers during a specified time period. You state you have released some of the requested information. 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.

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, 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

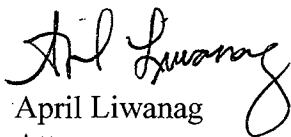
violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton 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). 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 raise the common-law informer’s privilege with respect to information pertaining to a caller who reported a possible violation of a city ordinance to the city. You state a violation of the relevant city ordinance carries criminal penalties. You state there is no indication the subject of the complaint knows the identity of the informer. We note in some circumstances, where an oral statement is captured on tape and the voice of the informer is recognizable, it may be necessary to withhold the entire audio statement to protect the informer’s identity. Open Records Decision No. 434 at 2 (1986). Based upon your representations and our review, we conclude the city has demonstrated the applicability of the common-law informer’s privilege to the information at issue. Therefore, the city may withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with the common-law 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,



April Liwanag
Attorney
Open Records Division

AML/eb

Ref: ID# 668464

Enc. Submitted documents

c: Requestor
(w/o enclosures)