



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 1, 2017

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

OR2017-17198

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# 675475 (PIR# 35291).

The City of Austin (the "city") received a request for information pertaining to specified complaints. You claim some of 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 representative sample of information.¹

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by 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). 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. Open Records Decision Nos. 515 at 3 (1988), 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

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

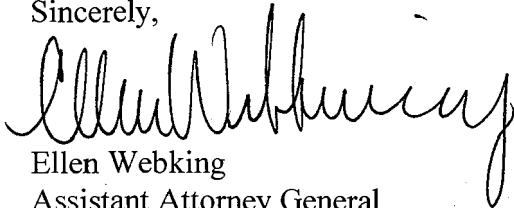
inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You have marked information the city seeks to withhold under the common-law informer’s privilege. You state the marked information identifies complainants who reported possible violations of the city’s Code of Ordinances to the city’s Code Department, which has the authority to enforce the code. You state a violation of the ordinances is punishable by fine of up to \$2,000. Further, there is no indication the subjects of the complaints know the identities of the complainants. Based upon your representations and our review, we conclude the city has demonstrated the applicability of the common-law informer’s privilege to most of the information you have marked. Therefore, with the exception of the information we marked for release, the city may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, we find the remaining information does not identify the informer for purposes of the informer’s privilege, and the city may not withhold it under section 552.101 on that ground. The city must release the remaining information.

The city also asks this office to issue a previous determination that would permit it to withhold information under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege without requesting a ruling from this office. We decline to issue such a previous determination at this time. Accordingly, 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 675475

Enc. Submitted documents

c: Requestor
(w/o enclosures)