



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 29, 2017

Ms. Lisandra Leal
Records Analyst
City of North Richland Hills
P.O. Box 820609
North Richland Hills, Texas 76182-0609

OR2017-29278

Dear Ms. Leal:

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# 697123 (ORR# W001647).

The City of North Richland Hills (the "city") received a request for reports pertaining to a named individual or a specified address. The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we agree most of the information the city marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find the city has not demonstrated some of the information it marked is highly intimate or embarrassing and not of legitimate public concern. This information, which we have marked for release, may not be withheld

under section 552.101 in conjunction with common-law privacy. Therefore, with the exception of the information we marked for release, the city must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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. The city raises 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*.

The city states some of the submitted information, which it has marked, identifies a complainant who reported a violation of a city ordinance to the city’s Code Compliance Department (the “department”). The city explains the department is responsible for enforcing the relevant portions of the city ordinance. The city also states a violation of the relevant city ordinance carries civil or criminal penalties. Based upon these 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 information it marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

In summary, with the exception of the information we marked for release, the city must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city may withhold the information it marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 697123

Enc. Submitted documents

c: Requestor
(w/o enclosures)