



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 11, 2019

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

OR2019-09826

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# 766469 (PIR# C025723).

The City of Austin (the "city") received a request for specified types of records related to specified addresses. You claim portions of the submitted information are 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 you have only submitted a code compliance complaint related to one of the specified addresses. Thus, to the extent any additional information responsive to the request existed and was maintained by the city on the date you received the request, we assume you have released it. If you have not released any such information, you must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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)*. However, individuals who provide information in the course of an investigation 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 state portions of the submitted information identify a complainant who reported a violation of the city’s code of ordinances to the city’s Code Department (the “department”). You explain the department is responsible for enforcing the relevant portion of the city ordinances. You also state a violation of the relevant city ordinance is a misdemeanor punishable by fine. You state there is no indication the subject of the complaint knows the identity of the informer. Based upon your representations and our review, we conclude you have demonstrated the applicability of the common-law informer’s privilege to the information at issue, which you have marked. Therefore, 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. As you raise no further exceptions to disclosure, 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,

A handwritten signature in black ink, appearing to read "Tim Neal". The signature is written in a cursive style with a large initial "T" and "N".

Tim Neal
Assistant Attorney General
Open Records Division

TN/gw

Ref: ID# 766469

Enc. Submitted documents

c: Requestor
(w/o enclosures)