



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 18, 2019

Ms. Lola Dada-Olley
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2018-16429

Dear Ms. Dada-Olley:

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# 771218 (Plano ORR# NS19-010).

The City of Plano (the "city") received a request for information relating to a specified complaint during a designated time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). The city received the request for information on March 29, 2019. Thus, the city's ten-business-day deadline was April 15, 2019. While you raised section 552.101 of the Government Code within the ten-business-day time period as required by section 552.301(b), you did not raise section 552.103 until after the ten-business-day deadline had passed. Accordingly, we conclude the city failed to comply with the requirements of section 552.301 in raising section 552.103.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumptions

that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). We find the city failed to establish a compelling reason to address its claim under section 552.103. Consequently, the city may not withhold any of the submitted information at issue under section 552.103 of the Government Code. However, we will consider your timely raised argument under section 552.101 of the Government Code for the submitted information.

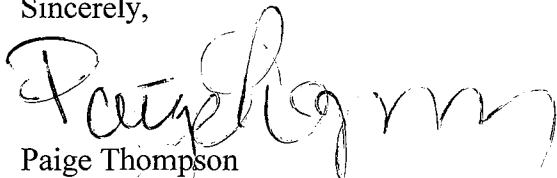
Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information protected by the common-law informer’s privilege, which has long been 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 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 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 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 4-5. 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).

You state the marked information reveals the identity of an individual who reported possible violations of section 6-80 of Division 3 of Article 3 of Chapter 6 of the city’s municipal code to the city’s Neighborhood Services Department. You explain the city’s Neighborhood Services Department is responsible for enforcing this provision and a violation of this provision is a misdemeanor. You do not indicate, nor does it appear, the subject of the complaint knows the identity of the reporting party. Therefore, based on your representations and our review, we conclude 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. *See* Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city’s animal control division is excepted from disclosure by informer’s privilege so long as information furnished discloses potential violation of state law). 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 "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/be

Ref: ID# 771218

Enc. Submitted documents

c: Requestor
(w/o enclosures)