



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 20, 2019

Ms. Lauren Downey
Assistant Attorney General
Assistant Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2019-23158

Dear Ms. Downey:

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# 781377 (PIR# R001251).

The Office of the Attorney General (the "OAG") received a request for information pertaining to complaints made concerning a specified state law. The OAG states it will release some of the responsive information with redactions allowed by law. The OAG also states it will continue to rely on Open Records Letter No. 2018-09659 (2018) with respect to some of the requested information.¹ The OAG claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.²

¹ In Open Records Letter No. 2018-09659, this office determined the OAG may withhold the information it marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege, and the OAG must release the remaining information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

² We 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

Initially, the OAG argues a portion of the request requires the OAG to answer questions. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). In this instance, we assume the OAG has made a good faith effort to locate any information responsive to this request. Accordingly, we will address the claimed exception 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). 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).

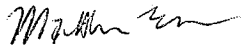
The OAG states the information it marked reveals the identities of individuals who reported possible violations of section 752.055 of the Government Code to the OAG. The OAG indicates it is charged with investigating potential violations of section 752.055. Further, the OAG states it may bring suit against the local entity at issue if a violation occurred to compel future compliance, seek a civil penalty, or removal of the official from office. Based on the OAG’s representations and our review of the information at issue, we conclude the OAG may withhold the information it marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The OAG 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.

letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/eb

Ref: ID# 781377

Enc. Submitted documents

c: Requestor
(w/o enclosures)