



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 12, 2020

Mr. Neal Falgoust
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767

OR2020-04411

Dear Mr. Falgoust:

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# 818713 (ORR# C055918).

The City of Austin (the "city") received a request for information pertaining to a code enforcement complaint at a specified address. 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 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. 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 the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided that the subject of the report does not already know the informer's identity. Open Records Decision Nos. 515 at 2-3 (1988), 434 at 1-2 (1986), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to criminal 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)). For the informer's privilege to apply, the report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at (1990), 515 at 3-4.

You assert a portion of the submitted information reveals the identity of an individual who reported possible city code violations to the city staff members responsible for enforcing city code violations. You explain the violations at issue carry a civil penalty. However, we note the submitted information you do not seek to withhold indicates the complainant and the subject of the complaint are the same person. If the complainant and the subject of the complaint are the same person, we find the subject of the complaint knows the identity of the complainant, and the city may not withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. If the complainant and the subject of the complaint are not the same person, then, based on your representations, we find 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. The city must release any 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 <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,



Jesse Harvey
Assistant Attorney General
Open Records Division

JHI/gw

Ref: ID# 818713

Enc. Submitted documents

c: Requestor
(w/o enclosures)