



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 18, 2020

Ms. Dawn Roberts
Assistant City Attorney
City of Arlington
Mail Stop 04-0200
P.O. Box 1065
Arlington, Texas 76004-1065

OR2020-16344

Dear Ms. Roberts:

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# 833662 (ID# W098984-040120).

The City of Arlington (the "city") received a request for a record of the complaint filed against the requestor's home, and who reported the violations received by the requestor. The city claims 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 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 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 the submitted information consists of a complaint of a violation of a municipal ordinance that was investigated by a code enforcement officer. The city asserts that "although the records ... do not formally name the complainant, [they contain] facts sufficient for the requestor to be able to identify the complainant." Upon review, however, we find the city has not demonstrated the submitted information identifies an individual who reported a criminal violation to the city for purposes of the informer's privilege. Accordingly, the city may not withhold any of the submitted information under section 552.101 on that basis. Accordingly, as the city raises no further arguments against disclosure, it must release the submitted information to the requestor.

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,

Michael Pearle
Assistant Attorney General
Open Records Division

MP/gw

Ref: ID# 833662

Enc. Submitted documents

c: Requestor
(w/o enclosures)