



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2020

Ms. Rebekah Wendt
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2020-16977

Dear Ms. Wendt:

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# 834802 (GC No. 26638).

The City of Houston (the "city") received a request for all records pertaining to a specified location. You state you will make some of the requested information available. You also state the city does not possess some of the requested information.¹ You claim 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. This section encompasses information protected by other statutes, such as section 1702.284 of the Occupations Code. Section 1702.284(a) provides:

(a) Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the [Texas Private Security Board], to the alarm company to which the confidential records relate, or as otherwise required by state law or court order.

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Occ. Code § 1702.284(a); *see also id.* § 1702.002(1)(A)(ii) (defining “alarm system” as electronic equipment and devices designed to detect or signal the occurrence of a robbery or other emergency). Upon review, we find Exhibit 2 consists of information made confidential by section 1702.284. Accordingly, the city must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 1702.284 of the Occupations Code.

Section 552.101 of the Government Code also encompasses the 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 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).

You state the information you indicated in Exhibit 3 reveals the identity of complainants who reported possible violations of state law and city ordinances that carry civil penalties to the city. There is no indication the subject of the complaint knows the identities of the complainants. Based on your representations and our review, we conclude some of the information you indicated identifies the complainants; thus, the city may withhold the information we indicated under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, we note the purpose of the privilege is to encourage “citizens” to report wrongful behavior to the appropriate officials. *See Riviera v. United States*, 353 U.S. 53, 59 (1957). The privilege is not intended to protect the identities of public officials who have a duty to report violations of the law. Because some of the complainants at issue were acting within the scope of their employment, the informer’s privilege does not protect their identities. *Cf. United States v. St. Regis Paper Co.*, 328 F. Supp. 660, 665 (WAD. Wis. 1971) (concluding that public officer may not claim informer’s reward for service it is his or her official duty to perform). Accordingly, the city may not withhold the information at issue under section 552.101 of the Government Code in conjunction with the informer’s privilege.

The city must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 1702.284 of the Occupations Code. The city may withhold the information we indicated under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The city must release the remaining information in Exhibit 3.

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,

Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/eb

Ref: ID# 834802

Enc. Submitted documents

c: Requestor
(w/o enclosures)