



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2020

Mr. L. Brian Narvaez
Counsel for the Town of Prosper
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2020-17933

Dear Mr. Narvaez:

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# 836382 (Prosper ID No. 2020-111).

The Town of Prosper (the "town"), which you represent, received a request for certain information pertaining to a specified complaint. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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. You claim section 552.101 in conjunction with 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 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 Nos. 515 at 3 (1998), 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." *See 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 involve 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 the informer's identity. *See Open Records Decision No. 549 at 5 (1990)*.

You seek to withhold the information you marked in Exhibit B under the common-law informer's privilege. You state the information you marked reveals the identity of a complainant who reported a violation of Ordinance 19-21 of the town's ordinances to the town's public works department, which is authorized to investigate and enforce the violation at issue. You further explain a violation of Ordinance 19-21 is a misdemeanor, punishable by a fine up to \$2,000. There is no indication the subject of the complaint knows the identity of the complainant. Based upon your representations and our review, we conclude the town may withhold the information you marked in Exhibit B under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Exhibit B-1 relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Based upon this representation and our review, we agree section 552.108(a)(2) is applicable to Exhibit B-1. Therefore, the town may withhold Exhibit B-1 under section 552.108(a)(2) of the Government Code.

In summary, the town may withhold the information you marked in Exhibit B under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The town may withhold Exhibit B-1 under section 552.108(a)(2) of the Government Code. The town 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 <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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/rm

Ref: ID# 836382

Enc. Submitted documents

c: Requestor
(w/o enclosures)