



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 27, 2022

Ms. Raquel Martinez
Deputy City Clerk
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR2022-12046

Dear Ms. Martinez:

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# 943342 (Ref. No. 23,393).

The City of Baytown (the "city") received a request for six points of information generally regarding a specified location. You state the city does not have some of the requested information.¹ You state you have released some information. 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 of the Government Code encompasses section 414.009(a) of the Government Code, which reads as follows:

A person who is a member or employee of the [Texas Crime Stoppers Council], a crime stoppers organization, a law enforcement agency, a school district, or an open-enrollment charter school or who accepts a tip under Section 414.0015(a) on behalf of the [Texas Crime Stoppers Council] or a

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

crime stoppers organization commits an offense if the person intentionally or knowingly discloses to a person not a member of or employed by the [Texas Crime Stoppers Council], a crime stoppers organization, a law enforcement agency, a school district, or an open-enrollment charter school the identity of a person who submitted a tip or the content of that tip without the person's consent, unless:

- (1) the person disclosing the information has received authorization to disclose the information from the chief executive of the crime stoppers organization that originally received the tip, and the chief executive has reasonably determined that failing to disclose the identity of a person who submitted the tip creates a probability of imminent physical injury to another; or
- (2) the disclosure is otherwise required by law or court order.

Id. § 414.009(a); *see id.* § 414.001(2)(B) (defining “crime stoppers organization” as public organization operated on local or statewide level, that pays rewards to persons who report to organization information about criminal activity, and that forwards information to appropriate law enforcement agency). You state the information you marked consists of information provided to a crime stoppers organization. Upon review, we agree the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 414.009(a) of the Government Code.

Section 552.101 of the Government Code also 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*.

You state portions of the remaining information identify a complainant who reported violations of law to the city. You further state the city does not possess the technological capability to redact information from audio files. However, because the city had the ability to copy the submitted audio recording in order to submit it for our review, we believe the

city has the capability to produce a copy of only the non-confidential portions of the audio recording. Accordingly, based upon your representations and our review, we conclude the city has demonstrated the applicability of the common-law informer's privilege to most of the information at issue. Therefore, except for the information we marked for release, the city may withhold the information it marked and the information we indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find you have failed to demonstrate the applicability of the common-law informer's privilege to the remaining information at issue. Therefore, the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, the city must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 414.009(a) of the Government Code. Except for the information we marked for release, the city may withhold the information it marked and 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.

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,

Chase D. Young
Assistant Attorney General
Open Records Division

CDY/mo

Ref: ID# 943342

Enc. Submitted documents

c: Requestor
(w/o enclosures)