



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 4, 2022

Ms. Lindsey M. Hale
Counsel for the Town of Flower Mound
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2022-12671

Dear Ms. Hale:

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# 945196 (ORR# CE22-00077).

The Town of Flower Mound (the "town"), which you represent, received a request for information pertaining to a specified investigation. The town claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note most of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2021-29693 (2021). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the town must rely on Open Records Letter No. 2021-29693 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). We will address the town's arguments against the release of the submitted information not encompassed by Open Records Letter No. 2021-29693.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *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). 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).

The town indicates the remaining information it has marked identifies a complainant who reported violations of town ordinances to town staff members who are responsible for enforcing the relevant portions of the town ordinances. The town also indicates violations of the relevant town ordinances carry civil penalties. Upon review, we conclude the town may withhold the information it has marked, as well as the information we have marked, under section 552.101 of the Government Code in conjunction with the informer's privilege.

In summary, the town must rely on Open Records Letter No. 2021-29693 as a previous determination and withhold or release the identical information in accordance with that ruling. The town may withhold the remaining information marked under section 552.101 of the Government Code in conjunction with the informer's privilege. 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)