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ATTORNEY GENERAL OF TEXAS

June 28, 2022

Ms. Lori J. Robinson
Counsel for the City of Lakeway
Bickerstaff Heath Delgado Acosta LLP
3711 South MoPac Expressway, Building One, Suite 300
Austin, Texas 78746

OR2022-18527

Dear Ms. Robinson:

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# 955679.

The City of Lakeway (the "city") received a request for information pertaining to the requestor. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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). Additionally, the privilege is not intended to protect the identities of public officials and employees who have a duty to report violations of the law. Because a public employee acts within the scope of his employment when filing a complaint, the informer's privilege does not protect the public employee's identity. *Cf. United States v. St. Regis Paper Co.*, 328 F. Supp. 660, 665 (W.D. Wis. 1971) (public officer may not claim informer's reward for service it is public officer's official duty to perform). The city states the submitted information contains the identifying information of a complainant who reported possible criminal activities to a law enforcement agency. Upon review, we conclude the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. However, we find the city has failed to demonstrate the remaining information at issue identifies a complainant for purposes of the informer's privilege. Thus, the city may not withhold any of the remaining information under section 552.101 on that basis. Accordingly, 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 955679

Enc. Submitted documents

c: Requestor
(w/o enclosures)