



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2022

Ms. Tiffany Bangs
Assistant County Attorney
Harris County
1019 Congress Street, 15th Floor
Houston, Texas 77002-1700

OR2022-27434

Dear Ms. Bangs:

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# 971921 (C. A. File Nos. 22PIA0662 and 22PIA0689).

The Harris County Constable's Office, Precinct 5, (the "constable's office") received two requests from the same requestor for information pertaining to a specified incident. 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. Section 552.101 encompasses information protected by the common-law 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 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. Open Records Decision Nos. 515 at 3 (1988), 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." 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 be of a violation of a criminal or civil statute.

See Open Records Decision Nos. 582 at (1990), 515 at 4-5. 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).

You state the submitted information identifies a complainant who reported possible violations of a civil statute to the constable's office. We understand the constable's office is responsible for enforcing the relevant portions of the civil statute. We also understand a violation of the relevant civil statute is punishable by a fine. We note, in some circumstances, where an oral statement is captured on tape and the voice of the informant is recognizable, it may be necessary to withhold the entire audio statement to protect the informant's identity. Open Records Decision No. 434 at 2 (1986). Based upon your representations and our review, we conclude the constable's office has demonstrated the applicability of the common-law informer's privilege to some of the information at issue. Thus, the constable's office may withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find the constable's office has failed to demonstrate the remaining information at issue identifies a complainant for purposes of the informer's privilege. Therefore, the constable's office may not withhold any of the remaining information at issue under section 552.101 on that basis. As no further exceptions to disclosure have been raised, the constable's office 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/eb

Ref: ID# 971921

Enc. Submitted documents

c: Requestor
(w/o enclosures)