



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2009

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2009-06884

Dear Mr. Toscano:

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# 343683.

The City of Dallas (the "city") received two requests from the same requestor for audio recordings pertaining to the 3-1-1 calls that generated two specified service requests. You claim that the requested 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.

Initially, we note that you have only submitted a single audio recording for our review. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. The informer's privilege, incorporated into the Act by section 552.101, 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). This 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 that 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). It protects the identities of individuals who report violations of statutes to the police or similar law-enforcement

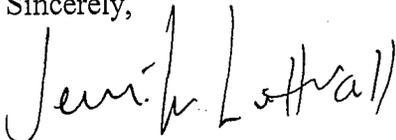
agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton 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 4-5 (1988). The privilege excepts an 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 submitted audio recording in its entirety under the informer's privilege. 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 statement to protect the informant's identity. Open Records Decision No. 434 at 2 (1986). You claim that the submitted audio recording identifies a person who reported suspected violations of section 7-3.2 of the Dallas City Code and sections 42.09, 42.092, and 42.10 of the Penal Code to the city Code Compliance Department. You state that punishments for a violation of the city ordinance and penal code provisions range from a Class A misdemeanor to a third degree felony and state jail felony. You represent that the city Code Compliance Department is responsible for investigation and enforcement of the specified city code and penal code provisions. Upon review of the submitted information, we believe this is a circumstance where the informer's privilege is applicable to the entire audio recording. Thus, the city may withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 343683

Enc. Submitted documents

c: Requestor
(w/o enclosures)