



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2009

Mr. Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2009-08045

Dear Mr. Hager:

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# 346451 (Ref. #36231).

The City of the Colony (the "city"), which you represent, received a request for information about "the call for [a certain address] on [March] 26, 2009." You claim the submitted information, the audio recording and call log for the referenced call, 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. You assert that the information at issue is excepted from disclosure under section 552.101 in conjunction with the informer's privilege. 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). It 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). 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 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). In *Roviaro v. United States*, 353 U.S. 53 (1957), the United States Supreme Court explained the rationale underlying the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

Roviaro v. United States, 353 U.S. 53 (1957). The informer's privilege protects not only the informer's identity, but also any portion of the informer's statement that might tend to reveal the informer's identity. See Open Record Decision Nos. 515 at 4-5 (1988). 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. See Open Records Decision No. 434 at 2 (1986).

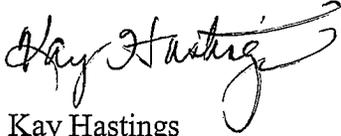
You state the audio recording and the call report reveal the identity of the person who informed the city of a suspect believed to be wanted by a law enforcement agency. You do not indicate, nor does it appear, the requestor knows the identity of the caller. Based on your representation and our review, we conclude the city may withhold the identifying information we have marked on the call report, as well as the audio recording in its entirety, under 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,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KH/sdk

Ref: ID# 346451

Enc. Submitted documents, CD

cc: Requestor
(w/o enclosures)