



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2014

Mr. David Ritter
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2014-03679

Dear Mr. Ritter:

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# 516592.

The City of Plano (the "city") received a request for information pertaining to a certain type of complaint made to the city during a specified period of time. You claim some of 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 informer's privilege protects 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 Nos. 515 at 3 (1998), 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." *See 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 involve a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. See Open Records Decision No. 549 at 5 (1990). We note the informer's privilege does not apply where the informant's identity is known to the individual who is the subject of the complaint. See ORD 208 at 1-2.

You indicate the submitted information identifies individuals who reported alleged violations of the law to officers charged with the enforcement of those laws. You state the city code imposes a criminal penalty for the reported violations. Based on your representations and our review, we agree the city may withhold the information we have marked under section 552.101 in conjunction with the common-law informer's privilege. However, the remaining information at issue reflects the remaining subjects of the complaints know the identities of the complainants. Accordingly, the city may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

We note the remaining information contains an e-mail address subject to section 552.137 of the Government Code.¹ Section 552.137 provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its release.²

In summary, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege, and must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its release. The city must release the remaining information.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note this office has issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", with a long, sweeping horizontal stroke extending to the right.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 516592

Enc. Submitted documents

c: Requestor
(w/o enclosures)