



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 27, 2015

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
Law Department
P.O. Box 1088
Austin, Texas 78767-8828

OR2015-05902

Dear Ms. Nicholson:

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# 563459.

The City of Austin (the "city") received a request for information pertaining to any calls made regarding a specified address, including the name and address of the individual who made any complaint against a specified address. You claim portions of the submitted information are 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. This exception 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 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 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 4-5.

You have marked information the city seeks to withhold under the common-law informer’s privilege. You explain the marked information identifies an individual who reported an alleged violation of section 3-2-5 of the Austin City Code using the city’s 3-1-1 system. You inform us the 3-1-1 system routed the report of the alleged violation to the city’s Animal Shelter, which has the authority to enforce this section of the code. You state a violation of section 3-2-5 is a misdemeanor punishable by fine. Further, the request for information reveals the subject of the complaint does not already know the identity of the complainant. Based on your representations and our review, we conclude the city has demonstrated the applicability of the common-law informer’s privilege to the information you have marked. Therefore, the city may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. See Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city’s animal control division is excepted from disclosure by informer’s privilege so long as information furnished discloses potential violation of state law). 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 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 563459

Enc. Submitted documents

c: Requestor
(w/o enclosures)