



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 28, 2015

Mr. Christopher Garza
Assistant District Attorney
Brazoria County District Attorney's Office
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2015-08169

Dear Mr. Garza:

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# 564600.

The Brazoria County District Attorney's Office (the "district attorney's office") received a request for information pertaining to a specified incident involving the requestor's client. You state the district attorney's office does not have information responsive to portions of the request.¹ 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. Section 552.101 encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identity of a person who has reported 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 No. 208* at 1-2 (1978). The informer's privilege protects the identity of an individual who has reported violations of statutes to the

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *Open Records Decision Nos. 605* at 2 (1992), *452* at 3 (1986), *362* at 2 (1983).

police or similar law-enforcement agencies, as well as an individual who has reported 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 1-2 (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 (1988). However, an individual who merely provides information in the course of an investigation is not an informant for the purposes of claiming the informer’s privilege.

You state portions of the submitted information identify witnesses who reported violations of law to the Alvin Police Department. However, upon review, we find the individuals at issue merely provided information in the course of an investigation and are not informants for the purposes of claiming the informer’s privilege. Accordingly, the district attorney’s office may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. As you raise no further exceptions to disclosure, the submitted information must be released.²

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

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²We note the requestor has a special right of access to her client’s motor vehicle record information being released pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023 (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

Ref: ID# 564600

Enc. Submitted documents

c: Requestor
(w/o enclosures)