KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2015

Ms. Brandi M. Youngkin
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2015-18698

Dear Ms. Youngkin:

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# 583966 (Plano ORR # 15-025 and 15-026).

The City of Plano (the "city") received two requests from different requestors for information pertaining to a specified incident. 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the 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 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. See Open Records Decision No. 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 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, witnesses who

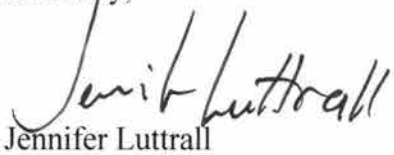
provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of the informer's privilege.

You contend portions of the submitted information reveal the identity of an individual who reported possible city code violations to the city's Animal Services Department. You indicate the subject of the report does not know the informer's identity, and the city has not revealed this information. You state the city's Animal Services Department is responsible for enforcing city code violations, including the code violations involved in the report at issue, and explain that a violation of the city code carries criminal penalties. Based on these representations, we conclude the city may withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find the remaining information at issue does not identify an informer for purposes of the informer's privilege. Accordingly, the city may not withhold the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As you raise no other exceptions to disclosure, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 583966

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)