



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2015

Ms. Jessica D. Richard
Assistant City Attorney
Office of the City Attorney
City of New Braunfels
424 South Castell Avenue
New Braunfels, Texas 78130

OR2015-19295

Dear Ms. Richard:

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# 579629 (CSO-2015-299).

The City of New Braunfels (the "city") received a request for complaints made against a specified address for a specified period of time. You state you have released some information. 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. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. The informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *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 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 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. However, the informer’s privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

You seek to withhold the information you have marked pursuant to the informer’s privilege. You inform us the complainant contacted the city’s Code Enforcement Division (the “division”) to report violations of the city’s Code of Ordinances, relating to right-of-ways, which are punishable by a fine. You state the division is responsible for enforcing the relevant portions of the city ordinances. You do not indicate, nor does it appear, the subject of the complaints knows the identity of the complainant. Based on your representations and our review, we conclude with the exception of the information we have marked for release, the city may withhold the information you have marked, which identifies the complainant, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, we find the city has not demonstrated how any of the remaining information at issue identifies an individual who has reported a violation of statute to the department or a similar law enforcement agency. Therefore, the city may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with the informer’s privilege. 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 579629

Enc. Submitted documents

c: Requestor
(w/o enclosures)