



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2015

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2015-20922

Dear Ms. Graham:

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# 582048.

The City of Mesquite (the "city") received a request for a specified police report. You state you will redact certain information pursuant to Open Records Letter No. 2012-07334 (2012).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 of the Government Code 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 report does not already know their identities. Open Records Decision Nos. 515 at 2-3 (1988), 434 at 1-2 (1986), 208 at 1-2 (1978). For the informer's privilege to apply, the report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at (1990), 515 at 3-4. The privilege affords protection to individuals who report violations of statutes to

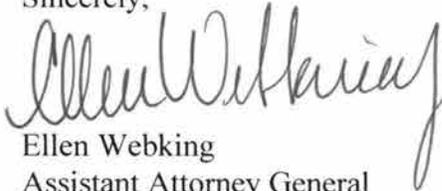
¹Open Records Letter No. 2012-07334 authorizes the department to withhold FBI numbers under section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code and federal law without requesting a ruling from this office.

criminal 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)). 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. Upon review, we find the city has not demonstrated the information you seek to withhold identifies an informer for purposes of the common-law informer’s privilege. Therefore, the city may not withhold the information at issue under section 552.101 on the basis of the common-law informer’s privilege. As no further exceptions to disclosure have been raised, 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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 582048

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to some of the information being released. Gov’t Code § 552.023. Accordingly, if the city receives another request for this same information from a different requestor, the city must again seek a ruling from this office.