



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 4, 2015

Ms. Linda Pemberton
Paralegal
City of Killeen
Office of the City Attorney
P.O. Box 1329
Killeen, Texas 76540-1329

OR2015-25431

Dear Ms. Pemberton:

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# 592399 (ID# W017571).

The City of Killeen (the "city") received a request for information pertaining to a specified complaint. You state the city has released some of the requested 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.

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. You raise section 552.101 in conjunction with 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 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, individuals who provide information in the course of an investigation are not informants for the purposes of claiming the informer’s privilege. The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. Open Records Decision No. 549 at 5 (1990). We note the informer’s privilege does not apply where the informant’s identity is known to the individual who is the subject of the complaint. See Open Records Decision No. 208 at 1-2 (1978).

You state portions of the submitted information identify a complainant who reported an alleged violation of section 6-36 of the City of Killeen Code of Ordinances. You also state a violation of the relevant city ordinance is a violation punishable by fine. Upon review, there is no indication the subject of the complaint knows the identity of the informer. Based upon your representations and our review, we conclude the city has demonstrated the applicability of the common-law informer’s privilege to some of the submitted information, which you have marked. Therefore, the city may withhold the information it has marked under section 552.101 of the Government Code in conjunction with the common-law 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MT/sb

Ref: ID# 592399

Enc. Submitted documents

c: Requestor
(w/o enclosures)