



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 23, 2016

Mr. Arnold G. Polanco
City Attorney
City of Friendswood
910 South Friendswood Drive
Friendswood, Texas 77546

OR2016-04305

Dear Mr. Polanco:

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# 599290 (City Ref. No. W005059-092215).

The City of Friendswood (the "city") received a request for a specified complaint and the name of the complainant. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor has requested only the written complaint and the name of the complainant. Thus, any other information, including the complainant's e-mail address, is not responsive to the instant request. This ruling does not address the public availability of

non-responsive information, and the city need not release non-responsive information in response to the request.¹

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. *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)*. 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 ORD 208 at 1-2*.

You state portions of the submitted information, which you have marked, identify a complainant who reported to the city a violation of section 21.146(a) of Title 43 of the Texas Administrative Code. However, upon review, we note section 21.146(a) does not make any conduct illegal, and you do not make any assertions as to whether a violation of the relevant law carries civil or criminal penalties. *See 43 T.A.C. § 21.146(a)* (providing that certain signs are exempt from requirements set forth in subchapter I of chapter 21 of Title 43 of the Texas Administrative Code). Further, you have not directed our attention to any other provision of law alleged to have been violated. Thus, upon review, we find you have not demonstrated the applicability of the common-law informer's privilege to the information at issue. Therefore, the city may not withhold the information you marked under section 552.101 on that basis. As the city does not raise another exception, the city must release the responsive 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.

¹As we are able to make this determination, we need not address the city’s argument against disclosure of this information.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 599290

Enc. Submitted documents

c: Requestor
(w/o enclosures)