



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2016

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla, Room 7DN
Dallas, Texas 75201

OR2016-08272

Dear Ms. Silver:

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# 605657.

The City of Dallas (the "city") received a request for information pertaining to a specified complaint. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code and privileged under Texas Rule of Evidence 508. We have considered your arguments 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).

Initially, we address the requestor's assertion he has a right of access to the requested information under article 39.14 of the Texas Code of Criminal Procedure. Article 39.14 governs the discovery of information and the testimony of witnesses in criminal proceedings. *See* *Crim. Proc. Code art. 39.14*. However, we note the Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See* *Gov't Code §§ 552.005* (the Act does not affect scope of civil discovery), *.0055* (subpoena duces tecum or request for discovery issued in compliance with statute or rule of civil or criminal procedure is not considered to be request for information under the Act). The discovery process is a process through which parties to litigation can obtain information pertaining to the litigation. A public information request under the Act is a process in which any

individual may request information from a governmental body. Thus, the discovery process has no bearing on the availability of information requested under the Act.

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. 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, 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 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)*.

You state the information you have marked reveals the identity of a complainant who reported a possible violation of section 7-3.1 of the city’s code to the city’s 3-1-1 call center. You state the complaint was referred to the city’s Code Compliance Department, which you explain has the authority to enforce the provisions of the code at issue. You also state that the alleged violation is a Class C misdemeanor punishable by a fine. Upon review, we conclude the city may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.¹ The remaining information must be released.

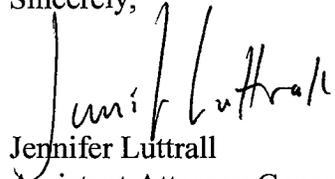
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

¹As our ruling is dispositive, we need not address your remaining argument against disclosure.

[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,

A handwritten signature in black ink that reads "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J" and "L".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 605657

c: Requestor