



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 15, 2016

Ms. Paige Mebane
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2016-08519

Dear Ms. Mebane:

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# 609064 (Fort Worth PIR# W049511).

The City of Fort Worth (the "city") received a request for information pertaining to a specified incident. 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.

Initially, we note the city seeks to withhold a date of birth of a public citizen. In Open Records Letter No. 2016-00620 (2016), this office issued a previous determination to the city authorizing it to withhold dates of birth of living individuals under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Therefore, the city must withhold the date of birth you have marked and the date of birth we have marked in accordance with the previous determination issued in Open Records Letter No. 2016-00620.

Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identity of a person who has reported 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 identity of an individual who has reported violations

of statutes to the police or similar law-enforcement agencies, as well as an individual who has reported 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, an individual who provides information in the course of an investigation but does not make a report of the violation is not an informant for the purpose of claiming the informer’s privilege.

You state the remaining information you have marked constitutes identifying information of a complainant who reported possible violations of the City Code to staff members who are charged with enforcing those provisions. You further state these violations are punishable by a fine of up to \$2000. However, upon review, the information reveals the individual at issue merely provided information in the course of the investigation and did not make a report of the violation. Thus, we find this individual is not an informant for the purposes of claiming the informer’s privilege. Therefore, the city may not withhold any of the remaining information you have marked under section 552.101 of the Government Code on that basis.

In summary, the city must withhold the date of birth you have marked and the date of birth we have marked in accordance with the previous determination issued in Open Records Letter No. 2016-00620. 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/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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 609064

Enc. Submitted documents

c: Requestor
(w/o enclosures)