



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 7, 2016

Ms. Jordan M. Powell
Assistant District Attorney
Caldwell County Criminal District Attorney's Office
1703 South Colorado Street, Box 5
Lockhart, Texas 78644

OR2016-12872

Dear Ms. Powell:

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# 613262 (Ref. No. 2016-011).

The Caldwell County Criminal District Attorney's Office (the "district attorney's office") received a request for specified information pertaining to a named individual.¹ You state you do not have information responsive to a portion of the request.² You state you will release some information to the requestor. You claim the submitted information is excepted from

¹You state the district attorney's office sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); see also *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses the 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 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)*.

You state the submitted information reveals the identity of a complainant who reported possible criminal violations of state law and city ordinances that carry criminal penalties to the Caldwell County Sheriff’s Office, which is authorized to enforce the laws and ordinances at issue. There is no indication the subjects of the complaints know the identity of the complainant. Based on your representations and our review, we conclude the information we have marked identifies the complainant. Thus, the district attorney’s office may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, you have failed to demonstrate the remaining information consists of the identifying information of an individual who reported a criminal violation for purposes of the informer’s privilege. Accordingly, the district attorney’s office may not withhold any of the remaining information under section 552.101 on that basis. The district attorney’s office 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,


Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 613262

Enc. Submitted documents

c: Requestor
(w/o enclosures)