



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2011

Ms. Savita Rai
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2011-14738

Dear Ms. Rai:

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# 432649 (COSA File No. W002534).

The City of San Antonio (the "city") received a request for the proposed agendas for two specified meetings of the Dangerous Structure Determination Board and each file on the agendas. You state the city will release some information to the requestor. You state the requested agendas had not been drafted at the time of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹The 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).

²Although you also raise section 552.108 of the Government Code, you do not provide arguments explaining the applicability of this section to the information at issue; therefore, we assume the city is no longer asserting this section. *See Gov't Code* § 552.301(e)(1)(A) (governmental body must explain applicability of raised exception).

³Although you inform us it has not been determined which files will be placed on which agendas, you have submitted one file as a representative sample of the responsive information. We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos.* 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

We note the submitted information consists of a completed investigation subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]” unless the information is expressly confidential under “other law” or excepted from disclosure under section 552.108 of the Government Code. Gov’t Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation by the city’s Housing and Neighborhood Services Department subject to section 552.022(a)(1). The city may withhold information subject to subsection 552.022(a)(1) only to the extent it is confidential under “other law” or excepted by section 552.108. Although you raise section 552.103 of the Government Code, this is a discretionary exception to disclosure that protects only a governmental body’s interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not “other law” that makes information confidential for the purposes of section 552.022, and the city may not withhold any of the information at issue on that basis. However, sections 552.101 and 552.137 are other law for purposes of section 552.022. Therefore, we will consider their applicability to 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. Section 552.101 encompasses 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); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The common-law 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. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The 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.” *See* Open Records Decision No. 279 at 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 4-5. The privilege excepts the informer’s statement only to the extent necessary to protect the informer’s identity. *See* Open Records Decision No. 549 at 5 (1990).

You state the submitted information contains documents “provided by complainants who wish to remain anonymous.” However, you do not inform us what criminal or civil statute was reported to be violated, nor do you explain how the city department receiving the complaints is responsible for enforcing any such statute. Furthermore, you do not explain how any of the submitted information identifies an informer for purposes of the common-law informer’s privilege. We therefore conclude the city has failed to demonstrate the

applicability of the common-law informer's privilege in this instance. Thus, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the informer's privilege.

Section 552.137 of the Government Code provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). Upon review, we find the submitted information does not contain any e-mail addresses of a member of the public. Accordingly, none of the submitted information may be withheld under section 552.137. As you raise no further exception to disclosure, the city must release the submitted information in its entirety.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 432649

Enc. Submitted documents

c: Requestor
(w/o enclosures)