



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2011

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2011-16725

Dear Ms. Sims:

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# 435943.

The City of Lubbock (the "city") received a request for specified audio recordings related to a specified report. You claim that 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 submitted report is not responsive to the instant request. The city need not release non-responsive information in response to this request, and this ruling will not address that information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information protected by the common-law 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). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that 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 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 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. However, individuals who provide information in the course of an investigation but do not make the initial 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 responsive information includes the identity of an individual who reported a possible violation of the Texas Penal Code to the city’s police department. We understand the subject of the information does not know the identity of the complainant. Based upon your representations and our review, we conclude that the city may withhold the identity of the informer, which we have indicated, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

We note some of the remaining responsive information is subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure information that relates to a motor vehicle operator’s license or driver’s license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. See Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130(a)(1)-(2)). Accordingly, we find the city must withhold the license plate number we have indicated under section 552.130 of the Government Code.

In summary, the city may withhold the information we have indicated under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The city must withhold the information we have indicated under section 552.130 of the Government Code. The remaining responsive 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.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free,

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a large circular flourish at the end.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 435943

Enc. Submitted documents

c: Requestor
(w/o enclosures)

