



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2011

Ms. Diana Davis  
Records Clerk  
Harker Heights Police Department  
402 Indian Trail  
Harker Heights, Texas 76548

OR2011-18864

Dear Ms. Davis:

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# 440653.

The Harker Heights Police Department (the "department") received a request for recordings of telephone calls between a named individual and the department "on or around" two specified dates. You claim that some of the requested 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.

You seek to withhold the identity of the caller in the submitted audio recording and related call for service under section 552.101 of the Government Code in conjunction with the informer's privilege. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 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 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. *See Open Records Decision Nos. 515 at 3 (1998), 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 represent the submitted information contains the identifying information of a complainant who reported possible violations of the Penal Code to the department. You do not inform us that the subject of the information knows the identity of the complainant. Thus, based on the department's representations and our review, we conclude that the department may withhold the identity of the informer under section 552.101 of the Government Code in conjunction with the common-law informers privilege. We note in some circumstances, where an oral statement is captured on tape and the voice of the individual is recognizable, it may be necessary to withhold the entire audio statement to protect the informant's identity. Open Records Decision No. 434 at 2 (1986).

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 440653

Enc. Submitted documents

c: Requestor  
(w/o enclosures)