



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2012

Ms. Alexis G. Allen
For the City of Rowlett
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2012-12695

Dear Ms. Allen:

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# 461966 (Ref# 55748).

The City of Rowlett (the "city"), which you represent, received a request for the phone numbers or names of individuals who reported animal control or code enforcement violations against the requestor. You state you have no responsive information pertaining to some of the complaints against the requestor.¹ You claim the remaining requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor seeks only the names or telephone numbers of individuals who reported violations. You have submitted documents that contain information beyond these specific pieces of information. Thus, the portions of the submitted documents that do not consist of the names or telephone numbers of the individuals at issue are not responsive to the present request. This ruling does not address the public availability of any information

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

that is not responsive to the request and the city is not required to release such information in response to this request.²

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 section 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). 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 identifies an individual who made a complaint about a barking dog, which is a violation of ordinance 6-7 of the city’s Code of Ordinances. You state the responsive information is protected by the informer’s privilege under section 552.101. However, upon review we find you have failed to demonstrate the alleged violation would result in a civil or criminal penalty. *See Gov’t Code § 552.301(e)(1)(A)*. Therefore, we find the city has failed to demonstrate the applicability of the informer’s privilege to the responsive information. Accordingly, the city may not withhold the responsive information under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. As you raise no other exceptions to disclosure of the responsive information, the city must release the responsive 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.oag.state.tx.us/open/index_orl.php,

²As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

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,

A handwritten signature in black ink that reads "Cynthia G. Tynan". The signature is written in a cursive, slightly slanted style.

Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 461966

Enc. Submitted documents

c: Requestor
(w/o enclosures)