



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2012

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2012-16766

Dear Ms. Nicholson:

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# 468328.

The City of Austin (the "city") received a request for information pertaining to calls to Animal Control for a specified address. You claim 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 representative sample of information.¹

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. 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 (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

¹We 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 those submitted to this office.

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 (1988). 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 have marked information in the submitted reports that the city seeks to withhold under the common-law informer’s privilege. You also seek to withhold the submitted audio recordings of 3-1-1 calls in their entirety under the common-law informer’s privilege. In some circumstances, where an oral statement is captured on tape and the voice of the informant is recognizable, it may be necessary to withhold the entire statement to protect the informant’s identity. Open Records Decision No. 434 at 2 (1986). You explain the information at issue identifies a person who reported possible violations of section 3-2-5 of the Austin City Code (the “code”), which encompasses proper care and welfare of an animal. You explain the reports were made to the city’s Animal Shelter, which has the authority to enforce this section of the code. You also state a violation of section 3-2-5 is punishable by a fine up to \$500. Based on your representations and our review, we conclude the city may withhold the information you have marked in the reports, as well as the 3-1-1 audio recordings in their entirety, under section 552.101 in conjunction with the common-law informer’s privilege. As you raise no other exceptions to disclosure, the city 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.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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 468328

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**