



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2012

Mr. Peter Gruning
Counsel for the City of Lockhart
Duvall Gruning & Dietz, PLLC
112 North LBJ Drive
San Marcos, Texas 78666

OR2012-17241

Dear Mr. Gruning:

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# 473536.

The City of Lockhart (the "city"), which you represent, received a request for information pertaining to a specified incident. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

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." This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *E.g.*, *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 submitted information reveals the identities of an individual reporting an alleged violation of section 10-15 of the city code. We understand the city has authority to enforce this ordinance and investigate alleged violations. You state violation of this ordinance may result in criminal penalties. Based on your representations and our review of the submitted information, we conclude the city may withhold the identifying information we have marked under section 552.101 in conjunction with the informer's privilege. However, you have not demonstrated how the remaining information reveals identifying information of individuals reporting violations of law. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code on the basis of the informer's privilege. As you raise no additional exceptions to disclosure, the remaining information must be released to the requestor.

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,

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 473536

Enc. Submitted documents

c: Requestor
(w/o enclosures)