ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2013

Ms. Linda Pemberton
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540

OR2013-00360

Dear Ms. Pemberton:

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# 480037.

The City of Killeen (the "city") received a request for information related to a specified complaint. You state the city has released some information to the requestor. You claim some of 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 information you submitted.

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 claim 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 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." *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 state the submitted information identifies an individual who made a complaint of an alleged dog fighting ring with a dog fight in progress, which you explain is a violation of section 821 of the city's ordinances. You indicate the complaint was made to the city's police department. You state a violation of section 821 is punishable by a fine. Based on your representations and our review, we conclude the city may withhold the information we have marked that identifies the complainant under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. *See* Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law). The rest of the submitted 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, 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# 480037

Enc. Submitted documents

c: Requestor
(w/o enclosures)