



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 20, 2013

Mr. Warren M.S. Ernst
Chief of the General Counsel Division
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2013-02820

Dear Mr. Ernst:

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# 479233.

The City of Dallas (the "city") received a request for a copy of a specified complaint against the requestor. You state some information will be released to the requestor. You claim the remaining information is excepted from disclosure under section 552.101 of the Government Code and privileged under Texas Rule of Evidence 508. We have considered your claims and reviewed the submitted information.

Initially, we note the submitted audio recording contains information pertaining to complaints not related to the request. This information is not responsive to the instant request for information. This ruling does not address the public availability of nonresponsive information, and the city is not required to release nonresponsive information in response to this request.

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 report violations of statutes with civil or criminal penalties to "administrative officials having

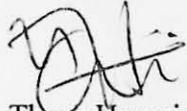
a duty of inspection or of law enforcement within their particular spheres.” See Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See 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 have marked information in the submitted document that the city seeks to withhold under the informer’s privilege. You also seek to withhold the responsive audio recording in its entirety under the 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 state the marked information and the audio recording identify an individual who reported a possible violation of section 7-3.2 of the city’s code to the city’s 3-1-1 call center. You state the complaint was referred to the city’s Code Compliance Department, which you explain has the authority to enforce the provision of the code at issue. You also state that the alleged violation is a Class C misdemeanor punishable by a fine. Upon review, we conclude the city may withhold the information you have marked and the entirety of the responsive audio recording under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.¹ The remaining 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

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¹As our ruling is dispositive, we need not address your remaining claim against disclosure.

Ref: ID# 479233

Enc. Submitted documents

c: Requestor
(w/o enclosures)

