



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2013

Ms. Josette Flores
Assistant City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-17788

Dear Ms. Flores:

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# 501953.

The City of El Paso (the "city") received a request for reports and complaints pertaining to a named individual and specified address. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us some of the information at issue was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-07349 (2013). In Open Records Letter No. 2013-07349 we noted the requestor had a potential right of access to some of the submitted information pursuant to section 552.023 of the Government Code. The current request involves a different requestor with no special right of access to the information that may have been released in the previous ruling. Thus, we find the circumstances on which the previous ruling was based have changed, and the city may not rely on Open Records Letter No. 2013-07349 as a previous determination in this instance. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body,

and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your argument against disclosure of 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.” Gov’t Code § 552.101. 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). However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer’s privilege. We note the informer’s privilege does not apply where the informant’s identity is known to the individual who is the subject of the complaint. *See* ORD 208 at 1-2.

You state the submitted information reveals the identity of one or more complainants who reported possible violations of sections 7.08.030 and 7.08.050 of the city code to the city’s police department or Animal Control personnel, in their capacity as code enforcement officers. You explain the alleged violations are misdemeanors punishable by fines. You state there is no indication the subject of the complaint knows the identity of any complainant. Based on your representations and our review, we conclude the city may withhold the identifying information of the complainants we have marked 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). However, none of the remaining information identifies an informer, and the city may not withhold any of the remaining information under section 552.101 in conjunction with the common-law informer’s privilege.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency

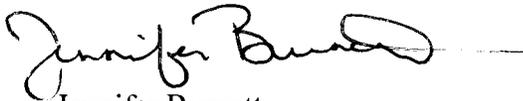
of this state or another state or country is excepted from public release.¹ *See* Gov't Code § 552.130(a)(1)-(2). Accordingly, the city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, the city may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the motor vehicle record information you have marked under section 552.130 of the Government Code. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 501953

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).