



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2013

Ms. Jessica D. Richard
Assistant City Attorney
City of New Braunfels
424 South Castell Avenue
New Braunfels, Texas 78130

OR2013-18186

Dear Ms. Richard:

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# 502874 (ORR No. 2013-319).

The City of New Braunfels (the "city") received a request for information pertaining to the Rivertree Homeowner's Association. You claim some of the submitted information is exempt from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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 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

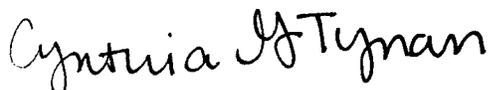
Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state portions of the submitted information identify a complainant who reported a violation of a city ordinance to the city's Code Enforcement Division (the "division"). You explain the division is responsible for enforcing the relevant portions of the city ordinances. You also state a violation of the relevant city ordinance carries fines and penalties. We have no indication the subject of the complaint knows the identity of the informer. Based upon your representations and our review, we conclude the city has demonstrated the applicability of the common-law informer's privilege to some of the information at issue. Therefore, 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. However, you have failed to demonstrate the remainder of the information you have marked consists of the identifying information of an individual who made the initial report of a criminal violation to the city for purposes of the informer's privilege. Accordingly, the city may not withhold the remaining information you have marked under section 552.101 of the Government Code on that basis. As no further exceptions to disclosure have been raised, 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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 502874

Enc. Submitted documents

c: Requestor
(w/o enclosures)