



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 14, 2014

Mr. William P. Chesser  
Counsel for the City of Hamlin  
Messer, Rockefeller & Fort, PLLC  
City of Hamlin  
4400 Buffalo Gap Road, Suite 2800  
Abilene, Texas 79606

OR2014-00787

Dear Mr. Chesser:

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# 510971.

The City of Hamlin (the "city"), which you represent, received two requests from the same requestor for dispatch recordings and computer-aided dispatch reports pertaining to a specified incident and information from a specified mobile data terminal during a specified time period. You state the city does not have any information responsive to a portion of the request.<sup>1</sup> 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 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).

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See 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)*. 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 Open Records Decision No. 208 at 1-2 (1978)*.

You state portions of the submitted audio recordings and the submitted document identify complainants who reported potential violations of Texas Penal Code § 42.01 ("Disorderly Conduct"), a class C misdemeanor, to the city's police department. In some circumstances, where an oral statement is captured on tape and the voice of the informant is recognizable, it the city must withhold the entire statement to protect the informant's identity. *Open Records Decision No. 434 at 2 (1986)*. You do not indicate, nor does it appear, the subjects of the complaints know the identities of the complainants. Based on your representations and our review, we conclude the city may withhold the information we have marked in the submitted document and the information we have indicated in the submitted audio recordings under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find you have failed to demonstrate any of the remaining information consists of the identifying information of an individual who made the initial report of a potential criminal violation to the city's police department for purposes of the informer's privilege. Accordingly, the city may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial*

*Foundation. Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have indicated in the audio recordings satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the city must withhold the information we have indicated in the audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the city may withhold the information we have marked in the submitted document and indicated in the audio recordings under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the information we have indicated in the audio recordings under section 552.101 of the Government Code in conjunction with common-law privacy. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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 Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 510971

Enc. Submitted documents

c: Requestor  
(w/o enclosures)