



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2014

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79701

OR2014-12172

Dear Mr. Ohnemiller:

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# 529513 (City ID# 14215).

The City of Midland (the "city") received a request for all documents, radio logs, 9-1-1 calls, and video and/or audio tapes pertaining to a specified incident. You state you have released some of the requested information. You claim 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.

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. This section encompasses 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 the subject of the information does not already know the informer's identity. *See Open Records Decision Nos. 515 at 3 (1998), 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 involve 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 seek to withhold the submitted audio recordings and a portion of the submitted in-car video under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. You state the complainant reported a possible violation of the law to city police officers charged with enforcement of the applicable law. We note in some circumstances, where an oral statement is captured on tape and the voice of the information is recognizable, it may be necessary to withhold the entire audio statement to protect the informant's identity. Open Records Decision No. 434 at 2 (1986). Based on your representations and our review, we agree release of the submitted audio recordings and the portion of the in-car video showing the complainant would reveal the identity of an informer for purposes of the common-law informer's privilege. Therefore, the city may withhold the submitted audio recordings in their entirety, as well as the portion of the submitted video revealing the complainant, under section 552.101 in conjunction with the common-law informer's privilege. As you raise no other exception to disclosure, 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, 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/eb

Ref: ID# 529513

Enc. Submitted documents

c: Requestor
(w/o enclosures)