



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2014

Ms. Judy Hickman
Assistant Supervisor
Records Division
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-2548

OR2014-17186

Dear Ms. Hickman:

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# 540204.

The Beaumont Police Department (the "department") received a request for the recording of a specified 9-1-1 call. 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. 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).

You state the audio recording contains information identifying a complainant who reported an alleged violation of law to the department. Upon review, there is no indication the subject of the complaint knows the identity of the informer. Based upon your representations and our review, we conclude the department has demonstrated the applicability of the common-law informer's privilege to the information at issue. Although you claim the department does not have the technological capability to redact the informer's identifying information from the submitted audio recording, because the department had the ability to copy the submitted audio recording in order to submit the requested information for our review, we believe the department has the capability to produce a redacted copy of the submitted audio recording. However, 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). Accordingly, if the department determines the voice of the informant is identifying, the department may withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, if the department determines the voice of the informant is not identifying, the department may only withhold the identifying information we have indicated under section 552.101 of the Government Code in conjunction with the common-law informer's privilege from the submitted recording. In that case, as you raise no further exceptions to disclosure, the department 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

Ref: ID# 540204

Enc. Submitted documents

c: Requestor
(w/o enclosures)