



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2014

Mr. Hal George
Counsel for the City of Ingleside on the Bay
5350 South Staples Street, Suite 407
Corpus Christi, Texas 78411

OR2014-22841

Dear Mr. George:

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# 548484.

The City of Ingleside on the Bay (the "city"), which you represent, received a request for information relating to complaints and telephone calls regarding construction at a specified address. The city claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the claims and reviewed the submitted information.

Initially, the city notes it does not know how to present the telephone number of the complainant and an oral complaint to this office for our review. Section 552.002(b) states the Act applies to recorded information in a variety of media. Gov't Code § 552.022(b). Additionally, the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is in its possession or control. Open Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the city has made a good-faith effort to do so.

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. *See 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

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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 city states the submitted information reveals the identity of a complainant who reported a possible violation of city ordinance 2012-04 to the city. The city explains a violation of city ordinance 2012-04 is a Class C misdemeanor punishable by fine. There is no indication the subject of the complaint knows the identity of the complainant. Based on the city's representations and our review, we conclude the information we have marked identifies the complainant; thus, 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, we find the remaining information does not identify an informer for the purposes of the informer's privilege. Accordingly, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As the city raises no other exceptions to disclosure, 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 548484

Enc. Submitted documents

c: Requestor
(w/o enclosures)