



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2014

Ms. Cathy Cunningham
Counsel for City of Keller
Boyle & Lowry, L.L.P.
4201 Wingren Drive, Suite 108
Irving, Texas 75062-2763

OR2014-22934

Dear Ms. Cunningham:

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# 548479.

The City of Keller (the "city"), which you represent, received a request for information that identifies the individual who made a complaint about certain signs. You state the city has released some information to the requestor. 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 considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by the common-law informer's privilege. *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 (1988), 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 be of a violation of a criminal or civil

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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).

The submitted information consists of a report to the city of a possible violation of the city’s sign ordinance. You state the report was made to the City Secretary, who is the official charged with enforcing this ordinance. However, you do not state whether a violation of this ordinance carries any criminal or civil penalties. Accordingly, we conclude the city has not established the applicability of the informer’s privilege, and the city may not withhold any of the submitted information under section 552.101 of the Government Code.

Section 552.137 of the Government Code provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c).¹ Gov’t Code § 552.137(a)–(c). The city must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release. 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 548479

Enc. Submitted documents

c: Requestor
(w/o enclosures)