



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 30, 2016

Mr. John P. Beauchamp
General Counsel
Texas Commission on Law Enforcement
6330 East Highway 290, Suite 200
Austin, Texas 78723-1035

OR2016-19604

Dear Mr. Beauchamp:

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# 624629.

The Texas Commission on Law Enforcement (the "commission") received a request for a specified complaint regarding improper training practices. The commission claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the commission claims 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. The commission raises 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. *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). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. 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* ORD 208 at 1-2.

The commission states the submitted information identifies a complainant who reported possible violations of law to the commission's Enforcement Division. We note, however, the privilege is not intended to protect the identities of public officials and employees who have a duty to report violations of the law. Because a public employee acts within the scope of his employment when filing a complaint, the informer's privilege does not protect the public employee's identity. *Cf. United States v. St. Regis Paper Co.*, 328 F. Supp. 660,665 (W.D. Wis. 1971) (concluding public officer may not claim informer's reward for service it is his or her official duty to perform). In this instance, we note the informer is an officer with a police department. Upon review, we find the commission has failed to demonstrate the applicability of the informer's privilege, and the commission may not withhold any of the information at issue under section 552.101 of the Government Code on that basis.

Section 552.1175 of the Government Code may be applicable to some of the submitted information.¹ Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Some of the submitted information pertains to an individual who may be subject to section 552.1175. Thus, the commission must withhold the information we have marked under section 552.1175 if it pertains to an individual who is subject to section 552.1175(a) and the individual elects to restrict access to this information in accordance with section 552.1175(b). If the individual is not subject to section 552.1175(a) or does not elect to restrict access to this information in accordance with section 552.1175(b), then the commission may not withhold this information under section 552.1175. The commission 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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 624629

Enc. Submitted documents

c: Requestor
(w/o enclosures)