



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 21, 2016

Ms. Linda Pemberton  
Office of the City Attorney  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540

OR2016-21317

Dear Ms. Pemberton:

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# 627567 (Killeen ID No. W019688).

The Killeen Police Department (the "department") received a request for records pertaining to all calls for police service to a specified address. You state the department 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.

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 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 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.

You state the information you have marked in call for service numbers K16066212, K16077463, and K16080368 reveals the identities of the complainants who reported alleged violations of a city ordinance to the department, which is authorized to enforce the ordinance at issue. You also state violation of the city ordinance at issue is punishable by a fine. Further, there is no indication the subject of the complaints knows the identities of the complainants. Based on your representations and our review, we conclude the information you marked identifies the complainants; thus, the department may withhold the information you marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The department must release the remaining information in call for service numbers K16066212, K16077463, and K16080368 to the requestor.

Section 552.101 of the Government Code also encompasses information protected by section 261.201 of the Family Code, which provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You argue the submitted information in call for service number K16082139 is subject to chapter 261 of the Family Code. Upon review, we find you have failed to demonstrate any portion of call for service number K16082139 was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established the information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining

“abuse” and “neglect” for purposes of section 261.201 of Family Code). Therefore, the department may not withhold call for service number K16082139 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As you raise no other exceptions against disclosure of this information, the department must release call for service number K16082139 to the requestor.

In summary, the department may withhold the information you marked under section 552.101 in conjunction with the common-law informer’s privilege. The remaining information must be released to the requestor.

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](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,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/akg

Ref: ID# 627567

Enc. Submitted documents

c: Requestor  
(w/o enclosures)