



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 6, 1997

Mr. John Steiner  
Division Chief  
City of Austin  
Law Department  
P.O. Box 1088  
Austin, Texas 78767-1088

OR97-0278

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103466.

The City of Austin (the "city") received a request for "any and all copies of specifically [sic] notes and correspondence pertaining to the investigation of [a particular] City Employee." You have submitted the requested documents to this office for review. You claim that portions of these documents are excepted from disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege. We have considered the exception you claim and have reviewed the documents at issue.

The informer's privilege, incorporated into the Open Records Act by section 552.101,<sup>1</sup> 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). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. 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 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5.

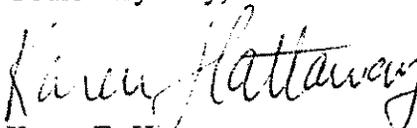
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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

The requested documents are maintained by the city's Waste and Wastewater Utility Department (the "department"). The documents relate to a department employee's allegedly criminal behavior. However, the informer's privilege does not apply here, because the department is not responsible for enforcing the specific laws that the employee allegedly violated. Thus, we conclude that the documents are not excepted from disclosure under section 552.101 and must be released to the requestor. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 103466

Enclosures: Submitted documents

cc: Ms. Linda Arocha  
914 Capitol Court  
Austin, Texas 78756  
(w/o enclosures)