



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 22, 2009

Mr. Mark G. Mann  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2009-00900

Dear Mr. Mann:

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# 332735 (GCA08-0828).

The City of Garland Health Department (the "department") received a request for information pertaining to a specified business. You state that you have released most of the information as well as redacted copies of the information submitted to this office. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim 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. This section encompasses the common-law 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 that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 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 2 (1981). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). However, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

You contend that the information marked in blue reveals the identities of complainants who reported possible violations of the city's ordinances relating to noise and sanitary food preparation. You state that violations of these ordinances constitute a violation of the law and result in the issuance of citations. You also state that the department is charged with the enforcement of these ordinances. Based on your representations and our review, we agree that the names and contact information you have marked in blue reveal the identities of informants. However, you also seek to withhold the name of another individual who is not an informant. In this instance, we agree that revealing the name of this individual would identify an informant. Accordingly, the department may withhold all of the information you have marked blue under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You claim that the information you have marked in purple is protected by common-law privacy. However, because the identity of the individual to whom the medical information belongs is being withheld under the informer's privilege, there is no privacy interest in the medical information you have marked. Therefore, the department may not withhold the information marked in purple under section 552.101 in conjunction with common-law privacy.

You claim that some of the remaining information is subject to section 552.130. Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas driver's license information you have marked in green as well the driver's license number we have marked under section 552.130.

In summary, the department may withhold the informants' identifying information under section 552.101 in conjunction with the informer's privilege. The department must withhold

the marked Texas driver's license information under section 552.130. The remaining information must be released.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/eeg

Ref: ID# 332735

Enc. Submitted documents

c: Requestor  
(w/o enclosures)