



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 13, 2009

Mr. Jesus Toscono, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2009-09571

Dear Mr. Toscono:

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# 348700.

The City of Dallas (the "city") received a request for copies of all complaints made against hot dog vendors from January 1, 2008, to April 23, 2009. You state you have released some of the information. You claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by 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

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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); see 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 at 2 (1990), 515 at 4-5 (1988).

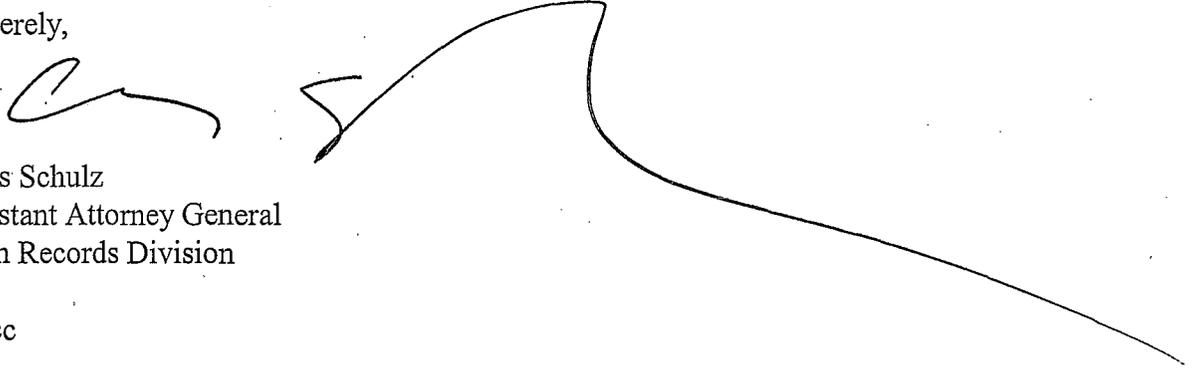
You seek to withhold the identities of multiple individuals in the submitted information. You assert that the information you have marked contains identifying information of complainants who reported possible violations of sections 17-8.2, 50-157, 50-159.1, and 50-160 of the Dallas City Code, which are Class C misdemeanors punishable by a fine of up to \$500. You also state some informers reported violations of sections 229.163(n)(1), 229.164(t)(1), and 229.164(a) of the Texas Food Establishment Rules, which are Class C misdemeanors punishable by a fine of up to \$2,000. You further state these complaints were made to the city's Environmental and Health Service Department, which is responsible for enforcing these laws. Having examined these provisions, your arguments, and the documents at issue, we conclude that the department may withhold the identifying information of the complainants which we have marked under section 552.101 in conjunction with the informer's privilege. We note, however, the other individual you have marked is a city employee. We note that the purpose of the informer's privilege is to encourage "citizens" to report wrongful behavior to the appropriate officials. See *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The privilege is not intended to protect the identities of public officials who have a duty to report violations of the law. Because a public employee acts within the scope of his or her 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 that public officer may not claim informer's reward for service it is his or her official duty to perform). Therefore, because this individual was acting within the scope of her employment when forwarding the complaint at issue, the informer's privilege is not applicable to this information. Accordingly, no portion of the remaining information may be withheld on the basis of section 552.101 and the informer's privilege. As you raise no further exceptions against disclosure, 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, 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,

A handwritten signature in black ink, appearing to read 'Chris Schulz', is written over a large, faint, curved line that spans across the page.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/cc

Ref: ID# 348700

Enc. Submitted documents

cc: Requestor
(w/o enclosures)