



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 30, 2009

Mr. Mark D. Kennedy  
Assistant District Attorney  
Hays County Criminal District Attorney- Civil Division  
111 East San Antonio Street, Suite 204  
San Marcos, Texas 78666

OR2009-10581

Dear Mr. Kennedy:

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# 350653.

The Hays County District Attorney's Office (the "district attorney") received a request for information pertaining to specified complaints, including the identity of the individual or organization who filed the complaints. You claim that portions of the requested information are exempted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the date the request was received. The district attorney need not release nonresponsive information in response to this request and this ruling will not address that information.

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<sup>1</sup>Although you also raise the informer's privilege under section 552.101 in conjunction with Texas Rule of Evidence 508, we note that the proper exception to argue in this instance is section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Accordingly, we will consider the information at issue under section 552.101. Further, we note this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

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. Section 552.101 encompasses 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 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. *See Open Records Decision Nos. 515 at 3 (1998), 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.” *See Open Records Decision No. 279 at 2 (1981) (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 at 2 (1990), 515 at 4-5*. The privilege excepts the informer’s statement only to the extent necessary to protect the informer’s identity. *See Open Records Decision No. 549 at 5 (1990)*.

You claim that a portion of the submitted information reveals the identity of an individual who reported possible regulatory violations to the Hays County Precinct Four Commissioner (the “commissioner”). You state the regulatory violations may involve a violation of chapter 26 of the Water Code. However, you do not indicate any specific statutory provision alleged to have been violated, nor have you indicated whether the violation of such a statutory provision carries with it a civil or criminal penalty. Further, you have not indicated whether the commissioner is the administrative official having a duty of enforcement of chapter 26 of the Water Code. Accordingly, we find that you have not demonstrated that the informer’s privilege is applicable to any portion of the submitted information. Thus, we conclude that the district attorney may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the informer’s privilege.

We note that a portion of the submitted information consists of a personal e-mail address that is subject to section 552.137 of the Government Code.<sup>2</sup> Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov’t Code § 552.137(a)-(c)*. The e-mail address at issue is not a type specifically excluded by section 552.137(c). Accordingly, the district attorney must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

of the e-mail address has affirmatively consented to its disclosure. As no further exceptions to disclosure have been raised, 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 350653

Enc. Submitted documents

c: Requestor  
(w/o enclosures)