



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2009

Mr. Rodney D. Patten
Assistant City Attorney
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2009-11816

Dear Mr. Patten:

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# 353295.

The City of Plano (the "city") received a request for records pertaining to a specified address. You claim that 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.

Initially, we note that some of the submitted information was created after the date of the request. Thus, this information, which we have marked, is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release that information.

You assert that the responsive information is excepted under section 552.101. 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 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);

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 assert that the submitted information pertains to an alleged city code violation that was reported to the city's property standards department. You also indicate that the alleged conduct carries criminal penalties. Based on your representations, we conclude the city may withhold the complainant's identifying information, which we marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, you have failed to demonstrate that the remaining information identifies an informant; therefore, no portion of the remaining information may be withheld under section 552.101 in conjunction with the informer's privilege.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 353295

Enc. Submitted documents

cc: Requestor
(w/o enclosures)