



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 26, 2009

Ms. Samantha Friedman
Assistant City Attorney
City of Bastrop
Law Offices of J.C. Brown, P.C.
1411 West Avenue, Suite 100
Austin, Texas 78701

OR2009-12057

Dear Ms. Friedman:

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# 353627.

The City of Bastrop (the "city"), which you represent, received a request for the identity of the person or persons who reported an alleged violation of the city code. You claim that the requested 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. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that an interested party may submit comments stating why information should or should not be released).

Initially, we note most of the submitted information is not responsive to the instant request for information. The requestor asks for the name and address of the complainant associated with a specified complaint. Accordingly, only the complainant's name and address is responsive to this request. This ruling does not address the public availability of nonresponsive information, and the city is not required to release nonresponsive information in response to this request.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. The informer’s privilege, incorporated into the Act by section 552.101, 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). This 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). It 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) (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.

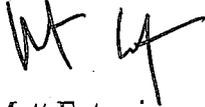
You state the requested information consists of the identity of a confidential informant who reported an alleged violation of a city ordinance to the city’s Sign Enforcement Officer, who is responsible for enforcing the law in question. We note, however, the individual at issue is a city official. The purpose of the informer’s privilege is to encourage “citizens” to report wrongful behavior to the appropriate officials. *See Roviario 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 official or employee acts within the scope of his or her official duty or employment when filing a complaint, the informer’s privilege does not protect the public official or 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). The submitted information identifies only the city official to whom the report of a violation was initially made. Therefore, because this individual was acting within the scope of her official duty when forwarding the complaint at issue, the informer’s privilege is not applicable to this information. Accordingly, no portion of the submitted 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 submitted responsive 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 'ME' followed by a stylized flourish.

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 353627

Enc. Submitted documents

c: Requestor
(w/o enclosures)