



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 9, 2009

Ms. Mindy Ward
City Attorney
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

OR2009-14311

Dear Ms. Ward:

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# 362497.

The City of San Angelo (the "city") received a request for a specified e-mail. 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.

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. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You state that the submitted e-mail, in its entirety, reveals the identity of an individual who reported a junk vehicle violation. However, you do not state, and our review of the

submitted information does not indicate, whether there is any civil or criminal penalty for such a violation. Accordingly, the city has failed to demonstrate that the informer's privilege applies to the submitted e-mail. Therefore, the city may not withhold any of the submitted e-mail under section 552.101 in conjunction with the informer's privilege.

We note that the submitted information contains an e-mail address that is subject to section 552.137 of the Government Code.¹ Section 552.137 provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See* Act of May 15, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Gen. Laws 651, 651-52, *amended by* Act of May 27, 2009, 81st Leg., R.S., ch. 962, § 7, 2009 Tex. Sess. Law Serv. 2555, 2557 (Vernon) (to be codified as an amendment to Gov't Code § 552.137(c)). The e-mail address we have marked is not of the types specifically excluded by section 552.137(c). Accordingly, the marked e-mail address must be withheld under section 552.137 of the Government Code, unless the owner of the e-mail address consents to its release. 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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), (1987).

Ref: ID# 362497

Enc. Submitted documents

c: Requestor
(w/o enclosures)