



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2009

Mr. Robert Massey
Assistant City Attorney
City of Wichita Falls
P.O. Box 1431
Wichita Falls, Texas 76307

OR2009-15328

Dear Mr. Massey:

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# 359623 (City of Wichita Falls ID# 213).

The Wichita Falls Police Department (the "department") received a request for information pertaining to a specified incident. You claim that the information you have marked in the submitted report is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

You claim that the information you have marked is protected by the common-law informer's privilege. 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. The common-law 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

¹Although you also raise sections 552.108 and 552.130 of the Government Code as exceptions to disclosure, you have provided no arguments regarding the applicability of these sections. Since you have not submitted arguments concerning these exceptions, we assume that you no longer urge them. *See* Gov't Code §§ 552.301(b), (e), .302

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

You state that the submitted information contains the identifying information of an individual who reported possible code violations to the animal control department. You explain the animal control department is responsible for enforcing the laws in question. You also state that the violations at issue resulted in quarantine of the animal and a trial. Based on your representations and our review of the submitted report, we conclude that the department has demonstrated the applicability of the common-law informer’s privilege to the identifying information you have marked. We note the some of the information you have marked does not constitute identifying information. Therefore, you may not withhold this information, which we have marked for release, under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. However, the department may withhold the remaining information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. The remaining information must be released to the requestor.

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

Ref: ID# 359623

Enc. Submitted documents

c: Requestor
(w/o enclosures)