



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2009

Mr. C. Patrick Phillips
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2009-16387

Dear Mr. Phillips:

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# 361865 (Fort Worth PIR No. 5505-09).

The City of Fort Worth (the "city") received a request for information pertaining to complaints and inspections of the requestor's property. You claim portions of the requested information are excepted from disclosure under section 552.101 of the Government Code.¹ 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. 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). It 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. *See Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978)*. The informer's privilege protects

¹Although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 508, this office has concluded that section 552.101 does not encompass discovery privileges under the Texas Rules of Evidence. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990)*.

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 (1988). However, witnesses who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege.

In this instance, you state some of the submitted information consists of the identifying information of complainants who reported violations of the city code to city staff members charged with enforcement of the code. You inform us, and provide documentation showing, that violations of the code are punishable by a fine of up to \$2,000 per day per violation. The information you have highlighted, however, pertains to witnesses who provided information during the course of the investigation, rather than to actual informants. Upon consideration of your arguments, we find you have failed to establish that the informer's privilege is applicable to the information at issue; thus, the city may not withhold any of the submitted information under section 552.101 of the Government Code on that basis. As you raise no further exceptions to disclosure, the submitted 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 361865

Enc. Submitted documents

cc: Requestor
(w/o enclosures)