



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

Mr. J. Frank Onion III
Law Offices of William M. McKamie, P.C.
941 Proton Road
San Antonio, Texas 78258

OR2009-17164

Dear Mr. Onion:

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# 363363.

The City of Leon Valley (the "city"), which you represent, received a request for any information pertaining to the requestor's address during a specified time period, including a specified e-mail message. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions 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. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects 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 (1998), 208 at 1-2 (1978)*. The 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." *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*. The privilege excepts the informer's statement

only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

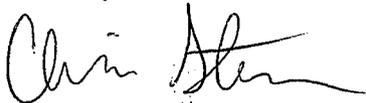
You seek to withhold the information you have marked in the submitted e-mail communication under section 552.101 in conjunction with the informer's privilege. However, you have not identified any violation of a statute, nor have you explained whether the violation carries civil or criminal penalties. Accordingly, the city has failed to demonstrate that the informer's privilege is applicable to the submitted information. Thus, we conclude that the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the informer's privilege.

Section 552.137 of the Government Code states 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 e-mail address we have marked is not of a type specifically excluded by section 552.137(c). *See id.* § 552.137(c). Therefore, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless its owner consents to its release. However, the remaining information you have marked does not contain any e-mail addresses. Therefore, the city may not withhold any of the remaining information under section 552.137. As you raise no further exceptions to disclosure, 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 363363

Enc. Submitted documents

c: Requestor
(w/o enclosures)