



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2009

Ms. Nicole B. Webster
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2009-18149

Dear Ms. Webster:

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# 365420 (City of Waco Reference # LGL-09-1036).

The City of Waco (the "city") received a request for information regarding the requestor's firing. You state that the city has released some of the requested information. You claim that portions of the submitted information are 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. 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 documents under section 552.101 in conjunction with the informer's privilege. You state that the marked information identifies individuals who reported information to a representative of the city's Inspections Department concerning an alleged assault. You further state that the city "has criminal law enforcement authority over the action." However, we note that some of the information you have marked relates to individuals who did not report the assault at issue to the city. Furthermore, you have not explained how the city's Inspection Department or the individuals to whom the statements at issue were made have a duty of law enforcement concerning an alleged assault. 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. 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/rl

Ref: ID# 365420

Enc. Submitted documents

c: Requestor
(w/o enclosures)