



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2010

Ms. Debra S. Mergel
The Mergel Law Firm
P.O. Box 40541
Houston, Texas 77240-0541

OR2010-00463

Dear Ms. Mergel:

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# 367033.

Austin County (the "county"), which you represent, received two requests from the same requestor for any information concerning the requestor, the requestor's wife, and the requestor's property collected by the county's environmental enforcement officer. You state that the county has released some of the submitted information to the requestor. You claim that a portion of 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.

Initially, we note that you have redacted a name from the submitted documents that you seek to withhold. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). As we are able in this instance to ascertain the nature of the information you have redacted, we will determine whether it is excepted from public disclosure. In the future, the county must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302. *See id.*

Section 552.101 of the Government Code exempts 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 (1988). The privilege exempts 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 have submitted documentation showing that the submitted information consists of a complaint of an alleged violation of chapter 343 of the Texas Health and Safety Code. We understand that the alleged violation reported is within the purview of the county's enforcement authority and that the identity of the individual reporting the violation is not known by the subject of the complaints or the requestor. We understand the alleged violation to carry criminal or civil penalties. Based on your representations and our review, we conclude the identifying information that we have marked is protected by the common-law informer's privilege and may be withheld on that basis under section 552.101 of the Government Code. The remaining submitted information must be released.¹

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

¹We note the information being released contains the requestor's Texas motor vehicle record information. Ordinarily, this information would be withheld under section 552.130 of the Government Code. However, because this information belongs to the requestor, it may not be withheld in this instance. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). If the county receives another request for this particular information from a different requestor, then the county should again seek a decision from this office.

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 367033

Enc. Submitted documents

c: Requestor
(w/o enclosures)