



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2014

Mr. Charles Homer, III
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2014-20545

Dear Mr. Homer:

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# 543067 (DSHS File No. 23415/2014).

The Texas Department of State Health Services (the "department") received a request for information pertaining to complaints, inspections, or investigations of a specified hospital during a specified time period and information pertaining to the surrender of the substance abuse treatment facility license by the same specified hospital.¹ You state you will release some of the requested information. You claim 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

¹We note the department sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Code § 552.101. This exception encompasses the common-law informer's privilege, which 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). The informer's 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 the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208* at 1-2 (1978). The informer's 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." *Open Records Decision No. 279* at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 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, the informer's privilege protects the content of the communication only to the extent that it identifies the informant. *Roviaro v. United States*, 353 U.S. 53, 60 (1957).

You contend portions of the submitted information identify individuals who reported to the department possible violations pertaining to the standard of care for a substance abuse treatment facility. You state the department is obligated to investigate alleged violations pertaining to the standard of care for substance abuse treatment facilities and enforce compliance under the statutory requirements and rule provisions of chapter 464 of the Health and Safety Code and chapter 448 of the Texas Administrative Code. We understand that such enforcement may result in civil or criminal penalties. *See, e.g.*, Health & Safety Code §§ 464.016-.017. You inform us you have no indication the subjects of the complaints know the identities of the complainants. Upon review, we conclude the department may withhold the information identifying the complainants, which we have marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. However, we find the remaining information at issue does not identify a complainant for purposes of the informer's privilege, and the department may not withhold it under section 552.101 on that basis. As you raise no further exceptions to disclosure, the department must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kenny Moreland', with a stylized, cursive script.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 543067

Enc. Submitted documents

c: Requestor
(w/o enclosures)