



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 2, 2015

Ms. Beverly West
Legal Department
County of Galveston
722 Moody Street, 5th Floor
Galveston, Texas 77550

OR2015-22935

Dear Ms. West:

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# 585305.

The Galveston County Health District (the "district") received a request for all complaints against a specified restaurant over a specified time period. You state you have released some information to the requestor. You claim some 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.

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 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 1-2 (1981)* (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. 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 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

You inform us the district seeks to withhold information that identifies a complainant who reported possible violations of chapter 437 of the Health and Safety Code, sections 229.161 through 229.171 and sections 229.173 through 226.175 of title 25 of the Texas Administrative Code, and the district's Food Service Establishments Policy, which the district has statutory authority to enforce.¹ You explain the violations at issue carry criminal penalties; specifically, you cite to the Order of the Galveston County United Board of Health (the "Order"), which provides that a violation of the rules adopted by the Order is a Class C misdemeanor. We have no indication the accused knows the identity of the complainant whose identity you seek to withhold. Based on your representations and our review of the information at issue, we agree that the district may withhold the identifying information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As you raise no further exceptions to disclosure, the remaining information must be released.

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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

¹Although sections 229.161 through 229.171 and sections 229.173 through 226.175 of title 25 of the Texas Administrative Code have been repealed, effective October 11, 2015, we note the rules at issue were still in effect at the time of the instant request.

Ref: ID# 585305

Enc. Submitted documents

c: Requestor
(w/o enclosures)