



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2015

Mr. Timothy E. Bray
Deputy General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2015-25070

Dear Mr. Bray:

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# 588724 (DSHS OR File: 24687/2015).

The Texas Department of State Health Services (the "department") received a request for information pertaining to a specified complaint. The department claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *Aguiar 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 1-2 (1981)

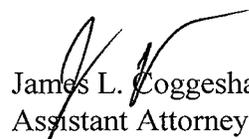
(citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

The department seeks to withhold the identity of an individual who made a complaint to the department regarding potential violations of chapters 431 and 437 of the Health and Safety Code. The department informs us this individual is a department inspector who made her complaint to her supervisors. Nevertheless, the department asserts the informer's privilege is applicable to her because she made the complaint "in her capacity as an individual, not as a [d]epartment employee." However, we note the purpose of the common-law informer's privilege is to encourage "citizens" to report wrongful behavior to the appropriate officials. See *Roviaro v. U.S.*, 353 U.S. 53, 59 (1957). The privilege is not intended to protect the identities of public officials who have a duty to report violations of the law. Because the public employee at issue was acting within the scope of her employment, the informer's privilege does not protect her identity. Cf. *U.S. v. St. Regis Paper Co.*, 328 F. Supp. 660, 665 (W.D. Wis. 1971) (public officer may not claim informer's reward for service it is the public officer's official duty to perform). Accordingly, the department may not withhold the information marked under section 552.101 of the Government Code in conjunction with the informer's privilege. Therefore, the department must release the submitted 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/sdk

Ref: ID# 588724

Enc. Submitted documents

c: Requestor
(w/o enclosures)