



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 18, 2016

Mr. Matt Peña  
Staff Attorney  
General Counsel Division  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2016-08628

Dear Mr. Peña:

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# 606131 (TDI# 169594).

The Texas Department of Insurance (the "department") received a request for any correspondence from a former actuary for Citizens National Life Insurance Company ("Citizens") to the department regarding the actuary's employment with Citizens. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state, and provide documentation showing, you notified the former actuary of the request for information and of his right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have received comments from the actuary. We have considered the submitted comments 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." *Id.* § 552.101. Section 552.101 encompasses information protected by 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 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. Open Records Decision Nos. 515 at 3 (1988), 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 (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 4-5.

The department and the actuary seek to withhold the submitted information under the common-law informer's privilege. However, neither the department nor the actuary has identified any specific law alleged to have been violated, nor has either party explained whether any violation carries civil or criminal penalties. Therefore, we find the department and the actuary have failed to demonstrate any portion of the information at issue consists of the identifying information of an informer for purposes of the informer's privilege. Accordingly, the department may not withhold any portion of the submitted information under section 552.101 on that basis.

The actuary also asserts the submitted information is confidential in its entirety under section 552.101 of the Government Code. The actuary analogizes the information at issue to the audit working papers which this office determined were confidential in Open Records Decision No. 640 (1996). In that decision, this office determined the audit working papers must be withheld pursuant to a specific confidentiality statute in the Insurance Code. See Open Records Decision No. 640 at 4. In the present instance, the actuary has not cited any law which would make the submitted letter confidential, nor are we aware of any such law. Therefore, we have no basis to conclude the information at issue is confidential under section 552.101 of the Government Code on that basis. As no further exceptions to disclosure have been raised, the submitted 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](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 that reads "Abigail T. Adams". The signature is written in a cursive, flowing style.

Abigail T. Adams  
Assistant Attorney General  
Open Records Division

ATA/akg

Ref: ID# 606131

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)