



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 28, 1996

Mr. John Steiner  
Division Chief  
Opinions, Research and Contracts  
Law Department  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-1088

OR96-0449

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38598.

The City of Austin (the "city") received an open records request for all information related to certain allegations made against the requestor's client, a Zilker Park concessionaire, as well as a copy of the file which the city maintains on the park concession. You ask whether the requested information is excepted from required public disclosure pursuant to the informer's privilege aspect of section 552.101 of the Government Code.

The Texas courts long have recognized the informer's privilege, *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), and it is a well-established exception under the Open Records Act, Open Records Decision No. 549 (1990) at 4. It protects from disclosure 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. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. 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 (1981) at 2 (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 (1990) at 2, 515 (1988) at 4-5. Where statements evidence no wrongdoing or violation of law, they are not protected by the informer's privilege. Open Records Decision No. 549 (1990); and see Open Records Decision No. 515 (1988) (where letters do not describe conduct which is clearly criminal, they are not excepted by the informer's privilege).

You state that the information was provided to the administrator of the city's park concession contracts. From our review of the records submitted to this office, it appears that the statements generally describe possible violations of the concession's contract with the city. There appears to be only one instance where the person providing the information "wonder[s]" whether the requestor's client may have violated state tax laws. As the administrator of the city's park concession contracts is not an official charged with the duty of enforcing the state's tax laws, see Open Records Decision No. 515 (1988), we must conclude that the informer's privilege is not applicable to the instant case.

We note that one page of the documents submitted to this office contains a copy of an individual's checking account deposit slip.<sup>1</sup> Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception applies to information made confidential by the common-law right to privacy. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *Id.* Financial information concerning an individual is in some cases protected by a common-law right of privacy. See Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that "all financial information relating to an individual . . . ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 (1983) at 3. As we believe that no legitimate public interest exists in this person's checking account, we conclude that you must withhold from public disclosure this piece of information. We have marked the document accordingly. The remainder of the information requested must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

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<sup>1</sup>The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Todd Reese". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/ch

Ref.: ID# 38598

Enclosures: Marked documents

cc: Mr. Richard T. Suttle, Jr.  
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(w/o enclosures)

