



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 15, 1998

Mr. W. Thomas Godard
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-3119

Dear Mr. Godard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120596.

The Texas Department of Health (the "department") received a request for information concerning possible violations of the Women, Infants and Children Program by the requestor's client. You originally claim that the requested information is excepted from public disclosure pursuant to sections 552.101 and 552.103 of the Government Code. In a subsequent letter, you inform us that you have dismissed the administrative action against the requestor's client and have provided the requestor with most of the requested information. However, you still maintain that the complainant's identity is protected by the informer's privilege under section 552.101. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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 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 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 at 2 (1990), 515 at 4-5 (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).

After reviewing your arguments and the submitted information, we conclude that you may withhold the complainant's identifying information, which we have marked, under section 552.101 in conjunction with the informer's privilege.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 120596

Enclosures: Marked documents

cc: Mr. Allan A. Cease
Allan A. Cease & Associates
4655 Sweetwater Boulevard., Suite 300
Sugar Land, Texas 77479
(w/o enclosures)