



June 8, 2000

Ms. Robin Abbott
General Counsel
Department of Economic Development
P.O. Box 12728
Austin, Texas 78711-2728

OR2000-2253

Dear Ms. Abbott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136522.

The Texas Department of Economic Development (the "department") received a request for the unedited version of a specific report. You claim that the requested 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 excepts information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision. The informer's privilege is well established under Texas case law and therefore, is encompassed by section 552.101. *See Aguilar v. State*, 444 S.W.2d 935 (Tex. Crim. App. 1969). The informer's privilege protects the identities of individuals who report violations of statutes to police, other law enforcement agencies, and certain administrative officials. *See Open Records Decision No. 279* (1981). It also protects from disclosure the identities of persons who report activities over which a governmental body has criminal or quasi-criminal law-enforcement authority. *See Open Records Decision Nos. 515 at 3* (1988), 208 at 1-2 (1978). In order for information to come under the protection of the informer's privilege, it must relate to a violation of a criminal or civil statute. *See Open Records Decision Nos. 515* (1998), 391 (1983). The privilege excepts an informer's statement only to the extent necessary to protect the informer's identity. *See Open Records Decision No. 549 at 5* (1990). Once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. *See Open Records Decision No. 202* (1978).

You state that the employees' names associated with the investigative interview are excepted from disclosure under the informer's privilege. You assert that the department's contract monitors perform the investigative interviews with the employees to insure the employer's compliance with statute. You contend that the monitors conduct the interviews confidentially so the employees can speak freely and candidly about the training they are receiving. However, you have not informed this office which specific criminal or civil statute was reported to have been violated as required when claiming the informer's privilege under section 552.101 of the Government Code. Therefore, we have no basis on which to conclude whether a violation of a criminal or civil statute exists. Furthermore, it does not appear from the interviews that the employees reported a violation of any statutes. *See Roviario v. United States*, 353 U.S. 53 (1957). Consequently, we find that section 552.101 in conjunction with the informer's privilege is not applicable. Accordingly, the department must release the requested information in its entirety.

This letter ruling is limited to the particular records 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 records or any other circumstances.

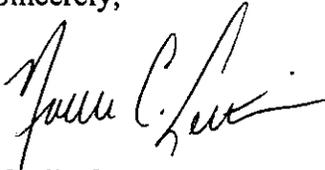
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Noelle C. Letteri". The signature is fluid and cursive, with a long horizontal stroke at the end.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

ncl/nc

Ref: ID# 136522

Encl. Submitted documents

cc: Mr. David Davenport
Kemil, Inc.
P.O. Box 60642
Houston, Texas 77205
(w/o enclosures)