

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



August 5, 2002

C. David Richards III  
Assistant General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR2002-4265

Dear Mr. Richards:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 166632.

The Texas Department of Health (the "department") received five requests for the identity of the complainant who made a complaint about a named individual in Blanco, Texas. One of the requestors additionally seeks all documents relating to the cease and desist closure of the home catering business operated by the named individual, as well as all internal department documents pertaining to the named individual. You inform us that all responsive information is being released with the exception of the identity of the complainant, which you claim is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted to this office by one of the requestors. See Gov't Code § 552.304.

First, we note your assertion that the complainant requested that the department keep the complainant's identity confidential. Information that is subject to disclosure under the Public Information Act may not be withheld simply because the party submitting it anticipates or requests confidentiality. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 676-78 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Further, it is well-settled that a governmental body's promise to keep information confidential is not a basis for withholding that information from the public, unless the governmental body has specific

authority to keep the information confidential. *See* Open Records Decision Nos. 514 at 1 (1988), 476 at 1-2 (1987, 444 at 6 (1986)).

You claim that the information you have highlighted is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law informer's privilege.<sup>1</sup> The common-law informer's privilege has long been recognized by Texas courts and is incorporated into the Public Information Act by section 552.101. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *see also 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 that the subject of the information does not already know the informer's identity. *See* Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege also 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." *See* 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 carrying a civil or criminal penalty. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

You state that the information at issue "relates specifically to enforcement by [the department] of criminal or civil statutes." However, you do not indicate the specific statutes alleged to have been violated nor do you indicate whether the violation of such statutes carries with it civil or criminal penalties. *See* Open Records Decision No. 279 at 2 (1981). Furthermore, it is not apparent from the face of the information what statutes were allegedly violated and whether such violations carry a civil or criminal penalty. Accordingly, we conclude that you have not met your burden of establishing that the identifying information of the complainant that you have highlighted is excepted from disclosure under section 552.101 in conjunction with the common-law informer's privilege. Consequently, as you raise no other exceptions to disclosure, the department must release the information at issue to the requestors.

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

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by the common-law informer's privilege.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 166632

Enc. Submitted documents

c: Ms. Shirley Runyon  
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Ms. Christina M. Gourley  
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Ms. Patsy B. Martin  
1410 Bluebonnet Drive  
Marble Falls, Texas  
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CAUSE NO. GV202945

TEXAS DEPARTMENT OF HEALTH,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS,	§	
Defendant.	§	345 <sup>TH</sup> JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff Texas Department of Health and Defendant Greg Abbott, Attorney General of Texas, appeared, by and through their respective attorneys, and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. In compliance with the Tex. Gov't Code § 552.325(c), the requestors were sent reasonable notice of this setting and of the parties' agreement that Plaintiff must withhold the information at issue. The requestors were also informed of their right to intervene in the suit to contest the withholding of this information. The requestors have not informed the parties of their intention to intervene; neither have they filed motions to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, the identity of the complainant in the matter of a complaint involving Ms. Troppy of Blanco, Texas, is excepted from public disclosure by the informer's privilege and Tex. Gov't Code § 552.101.

**FILED**

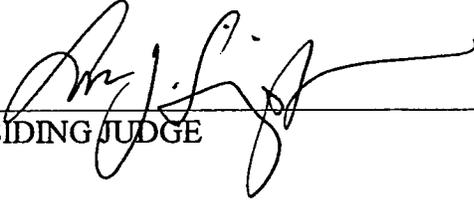
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*Wanda Rodriguez*

DISTRICT CLERK  
TRAVIS COUNTY, TEXAS

2. The TDH may withhold from the requestors the identity of the complainant.
3. All costs of court are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 24<sup>th</sup> day of January, 2003.

  
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PRESIDING JUDGE

APPROVED:



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