



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 22, 2004

Ms. Myrna S. Reingold
Galveston County Legal Department
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454

OR2004-0479

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194843.

The Galveston County Health District (the "district") received a request for information relating to a particular restaurant. You inform us that the district will release some of the requested information. You claim, however, that other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The district seeks to withhold some of the submitted information under section 552.101 in conjunction with the common-law informer's privilege. The Texas courts have long recognized the common-law informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). 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 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." *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 or law. *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).

You inform us that the district seeks to withhold information that identifies complainants who reported possible violations of chapter 437 of the Health and Safety Code and sections 229.163 and 229.164 of title 25 of the Texas Administrative Code, which the district has statutory authority to enforce. You explain that violations of chapter 437 carry criminal penalties; more specifically, you cite to the Order of the Galveston County United Board of Health (the "Order"), which provides that a violation of the rules adopted by the Order is a Class C misdemeanor. You have provided no information indicating that the requestor knows the identities of the complainants whose identities you seek to withhold. Based on your representations and our review of the information at issue, we agree that the district may withhold the identifying information that you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.101 also encompasses information that other statutes make confidential. You seek to withhold other responsive information under section 552.101 in conjunction with section 81.046 of the Health and Safety Code.¹ Section 81.046 provides in part:

(a) Reports, records, and information furnished to a health authority or the [Texas Department of Health] that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by Subsection (c) and (d).

Health & Safety Code § 81.046(a)-(b). In Open Records Decision No. 577 (1990), this office concluded that any information acquired or created during an investigation under chapter 81 of the Health and Safety Code is confidential and may not be released unless an exception set out in the statute applies.

You indicate that the information that you seek to withhold under section 81.046 relates to investigations of alleged food-borne illnesses that constitute reportable diseases under chapter 81 of the Health and Safety Code. Based on your arguments and our review of the information at issue, we agree that this information falls within the scope of section 81.046.

¹Section 81.046 is part of the Communicable Disease Prevention and Control Act, chapter 81 of the Health and Safety Code. *See* Health & Safety Code § 81.001.

You also state that none of the release provisions of section 81.046 is applicable in this instance. We therefore conclude that the district must withhold the investigative information in question under section 552.101 of the Government Code in conjunction with section 81.046 of the Health and Safety Code.

In summary: (1) the district may withhold the complainants' identities under section 552.101 in conjunction with the common-law informer's privilege; and (2) the district must withhold the information that is confidential under section 552.101 in conjunction with section 81.046 of the Health and Safety Code. The rest of the submitted information must be released.

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).

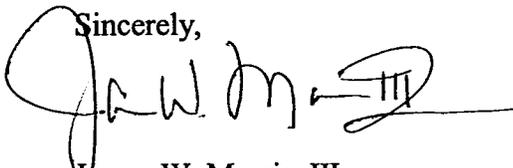
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 194843

Enc: Submitted documents

c: Mr. Zarnoff Dunlop
6601 Memorial Drive, #65 West
Texas City, Texas 77591
(w/o enclosures)