



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 14, 2006

Mr. Marcus W. Norris  
City Attorney  
City of Amarillo  
P. O. Box 1971  
Amarillo, Texas 79105-1971

OR2006-14704

Dear Mr. Norris:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 266901.

The City of Amarillo (the "city") received a request for copies of letters written to the Amarillo Code Enforcement Department complaining about a specified building located in the city, including the names of the people who wrote the letters. You state that the city will release most of the requested information, but claim the identities of the informers are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have redacted portions of the submitted information. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any such information without seeking a ruling from this office. *See Gov't Code § 552.301(a); Open Records Decision 673 (2000)*. Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), 552.302.*

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

*Id.* § 552.101. Section 552.101 encompasses information protected by the informer's privilege, which has long been recognized by Texas courts. *E.g.*, *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). The informer's privilege protects from disclosure the identities of persons who report activities over which a 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).

You state that the information you have marked reveals the identities of individuals who reported to the city's Code Enforcement Department alleged violations of the law which are punishable by criminal penalties. Upon review of the submitted information, we conclude that pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege, you may only withhold the marked information that actually reveals the identity of the individual who reported the alleged violation of law. We note that some of the information you have marked does not reveal the identity of an individual who reported an alleged violation of law. This information must be released to the requestor. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/eb

Ref: ID# 266901

Enc. Submitted documents

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(w/o enclosures)