



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 18, 2006

Mr. Leonard V. Schneider  
Ross, Banks, May, Cron & Cavin, P.C.  
2 Riverway, Suite 700  
Houston, Texas 77056

OR2006-03874

Dear Mr. Schneider:

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#246562.

The City of Seabrook (the "city"), which you represent, received a request for information regarding a specified complaint. You state that most of the requested information has been released, but claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The common law informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *See 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). This 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. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). It 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 an informer’s statement only to the extent necessary to protect the informer’s identity. *See* Open Records Decision No. 549 at 5 (1990).

In this instance, the submitted information contains one complaint made by a member of the public to a city councilman, and that councilman’s subsequent e-mail forwarding of the complaint to the “appropriate department[.]” You seek to withhold the identity of both the councilman and the complainant. We note, however, that since the purpose of the informer’s privilege is to maintain a governmental body’s channels of communication by shielding the identity of an *informer* from those who would have cause to resent his conduct, the protection afforded by the informer’s privilege generally does not extend to a government official who, while acting in an official capacity, receives a complaint or forwards a complaint to another government official or body. *See Rovario v. United States*, 353 U.S. 53, 60 (1957); *see also Ex parte Turner*, 545 S.W.2d 470, 476 (Tex. Crim. App. 1977). In this case, the councilman was acting in his official capacity when he received and forwarded the complaint at issue. You have not provided us with any additional arguments as to why the councilman’s identity should be withheld in this instance. Therefore, we find that the councilman’s identity is not protected by the informer’s privilege. We also note that while you have demonstrated that the complainant reported a violation of a criminal statute, you have not demonstrated that the councilman is an administrative official having a duty of inspection or of law enforcement over the violation in question. Therefore, we find that you have not established the applicability of the informer’s privilege in this case, and the complainant’s identity may not be withheld on that basis.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is specifically excluded by section 552.137(c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address we have marked does not appear to be of a type specifically excluded by section 552.137(c). Unless the relevant individual has consented to its release, we determine that the city must withhold the e-mail address we have marked. The remaining information must be released to the requestor.

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).

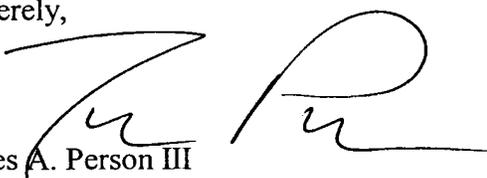
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James A. Person III  
Assistant Attorney General  
Open Records Division

JAP/sdk

Ref: ID# 246562

Enc. Submitted documents

c: Ms. Jean E. Ward  
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Seabrook, Texas 77586  
(w/o enclosures)