



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2007

Mr. Albert D. Hammack
The Town of Highland Park
4700 Drexel Drive
Highland Park, Texas 75205

OR2007-10130

Dear Mr. Hammack:

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 #286246.

The Town of Highland Park (the "town") received a request for information pertaining to a specified complaint. You state that the requestor subsequently narrowed her request to include only three categories of information: (1) information identifying the individual who made the complaint to the town, (2) information regarding the town's "Portable Breath Testing Device," and (3) information regarding the training of the town peace officer who responded to the complaint. You state that you have provided the requestor with information responsive to the second and third categories of the request. You also state that the town has released the non-highlighted portions of the submitted incident report. You claim, however, that the highlighted portions of the report are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim that the identity of the complainant may be withheld pursuant to the common-law informer's privilege. 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. Section 552.101 encompasses the common-law informer's privilege, which 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). It 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). 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. 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).

You state that the complainant at issue reported alleged violations of Town Ordinance § 8.01.005 ("Offensive noises and odors") and Texas Penal Code § 42.01 ("Disorderly Conduct") to the town's Department of Public Safety (the "department"). You have provided this office with an affidavit from a department officer indicating that the alleged conduct is a violation of criminal law. Based on your representations and our review, we conclude that the town has demonstrated the applicability of the common-law informer's privilege in this instance. Thus, the town may withhold the information it has marked pursuant to section 552.101 of the Government Code in conjunction with the informer's privilege.

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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/jh

Ref: ID# 286246

Enc. Submitted documents

c: Ms. Miriam Schober
3528 Rankin Street
Dallas, Texas 75205
(w/o enclosures)