



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 5, 2009

Ms. Carolyn Wright  
Assistant General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2009-01551

Dear Ms. Wright:

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# 334669.

The Department of State Health Services (the "department") received a request for information pertaining any complaints against a named business for a specified time period. You inform us that the department has released or will release some of the requested information. You claim that the information you have highlighted in the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 section 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 (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 submitted information contains identifying information of a person who reported possible violations of section 146.011 of the Health and Safety Code as well as section 229.407 of title 25 of the Texas Administrative Code to the department, which is the agency charged with enforcing these statutes. We note the alleged violations carry administrative, civil, and criminal penalties. See Health & Safety Code §§ 146.018, .019, .020. You inform us that to the best of the department's knowledge, the requestor does not know the identity of the informer. Based on your representations and our review of the submitted information, we conclude that the department may withhold the information we have marked under section 552.101 of the Government Code in conjunction with the informer's privilege. However, none of the remaining information at issue reveals the identity of an individual informer. Thus, none of the remaining highlighted information may be withheld based on the informer's privilege. As you raise no further exceptions against its disclosure, the remaining highlighted information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

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Enc. Submitted documents

cc: Requestor  
(w/o enclosures)