



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 26, 2009

Mr. Joshua W. Golden  
Johnson Radcliffe Petrov & Bobbit, P.L.L.C.  
1001 McKinney, Suite 1000  
Houston, Texas 77002-6424

OR2009-02516

Dear Mr. Golden:

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# 335838.

The City of West University Place (the "city"), which you represent, received a request for information pertaining to specified obstruction complaints. You claim that the requested 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.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it did not exist when the request was received. The city need not release nonresponsive information in response to this request and this ruling will not address that 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).

You inform us that the individual at issue reported a violation of a "[c]ity ordinance regarding visibility." The submitted information reveals the ordinance at issue was section 82-7, Visibility Triangles. However, you have not explained whether a violation of section 82-7 carries civil or criminal penalties. Further, you have failed to establish that the complaint was made to officials having a duty of inspection or law enforcement. Accordingly, the city has not met its burden in demonstrating that the informer's privilege is applicable to the submitted information. See Gov't Code § 552.301(e)(1)(A), Open Records Decision Nos. 542 (1990) (concluding that Act places on governmental body burden of establishing why and how exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Thus, we conclude that you may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the informer's privilege.

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 of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. You do not inform us that the owner of the e-mail address at issue consented to its release. Therefore, the city must withhold the e-mail address we have marked under section 552.137 of the Government Code. The remaining information you have marked under section 552.137 does not consist of e-mail addresses and may not be withheld under that exception. As you raise no further exceptions to disclosure, the remaining information must be released.

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 335838

Enc. Submitted documents

c: Requestor  
(w/o enclosures)