



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 27, 2009

Ms. Cary Grace
Assistant City Attorney
City of Austin, Law Department
P.O. Box 1088
Austin, Texas 78767-8828

OR2009-02585

Dear Ms. Grace:

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# 338494.

The City of Austin (the "city") received a request for "the name of the person or persons that complained to the City of Austin Solid Waste Services Code Enforcement Division regarding amount of impervious coverage" at the requestor's residence. You claim that a portion of 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. You raise section 552.101 in conjunction with the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects 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. *See Open Records Decision Nos. 515 at 3 (1998), 208 at 1-2 (1978)*. The 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." *See 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 the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

You state that the information you have marked identifies a person who reported a possible violation of the city's code of ordinances to the city's Solid Waste Services Department's Code Enforcement Division. You explain that this division is responsible for investigating the type of violation that was reported and has authority to enforce the applicable sections of the code. You further state that a violation of the ordinance involved can result in criminal penalties. Based on your representations and our review of the information at issue, we conclude that the city may withhold the marked information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.¹

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, 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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/jb

Ref: ID# 338494

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹This ruling does not address the remainder of the submitted information, which is not responsive to the request and need not be released to the requestor.